

PETER
VIDENIEKS

6-17-87

PETER
VIDENIERS

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1 UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF COLUMBIA
3 ----- x

4 In Re: :
5 INSLAW, INC., : Case No.
6 Debtor, : 85-00070
7 ----- :

8 INSLAW, INC., :
9 Plaintiff, :
10 vs. : Case No.
11 THE UNITED STATES OF AMERICA and : 86-0069
12 THE UNITED STATES DEPARTMENT :
13 OF JUSTICE, :
14 Defendants. :

15 ----- x
16 Washington, D.C.
17 Wednesday, June 17, 1987

18 Deposition of PETER VIDENIEKS, a witness
19 herein, called for examination by counsel for the
20 Plaintiff in the above-entitled action, pursuant to
21 notice, the witness being duly sworn by SUSAN A. HARRIS,
22 a Notary Public in and for the District of Columbia, at

1 the offices of McDermott, Will & Emery, Suite 500, 1850
 2 K Street, N.W., Washington, D.C., at 11:12 a.m., and the
 3 proceedings being taken down by Stenomask by SUSAN A.
 4 HARRIS and transcribed under her direction.

5 PHILIP L. KELLOGG, Esq.

6 McDermott, Will & Emery

7 1850 K Street N.W.

8 Washington, D.C. 20006

9 (202) 638-0722

10

11 On behalf of the Defendants

12 DEAN S. COOPER, Esq.

13 U.S. Department of Justice

14 Civil Division

15 P.O. Box 813 San Franklin Station

16 Washington, D.C. 20044

17 (202) 324-8618

18

19 Also present:

20 WILLIAM HAMILTON

21 Insolve, Inc.

22

1 APPEARANCES:

2

3

On behalf of the Plaintiff:

4

JAMES L. LYONS, ESQ.

5

PHILIP L. KELLOGG, ESQ.

6

McDermott, Will & Emery

7

1850 K Street N.W.

8

Washington, D.C. 20036

9

(202) 898-0722

10

11

On behalf of the Defendants:

12

DEAN S. COOPER, ESQ.

13

U.S. Department of Justice

14

Civil Division

15

P.O. Box 875 Ben Franklin Station

16

Washington, D. C. 20044

17

(202) 724-8418

18

19

Also present:

20

WILLIAM HAMILTON

21

Inslaw, Inc.

22

1	C-O-N-T-E-N-T-S	
2	WITNESS	EXAMINATION BY COUNSEL FOR
3		PLAINTIFF DEFENDANT
4	Peter Videnieks	
5	By Mr. Kellogg	5
6		
7	E-X-H-I-B-I-T-S	
8	VIDENIEKS DEPOSITION EX.	IDENTIFIED
9	No. 1	43
10	No. 2	48
11	No. 3	54
12	No. 4	62
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14	No. 6	89
15	No. 7 & 7A	96
16	No. 8	99
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18	No. 10	145
19	No. 11	151
20	No. 12	158
21	No. 13	179
22	No. 14	181

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18	No. 10		145
19	No. 11		151
20	No. 12		158
21	No. 13		179
22	No. 14		181

P R O C E E D I N G S

(Witness sworn.)

Whereupon,

PETER VIDENIEKS,

business address at U.S. Department of Justice, P.O. Box
875 Ben Franklin Station, Washington, D.C. 20044,
(202) 724-8418, was called as a witness and, after
having been first duly sworn by the Notary Public, was
examined and testified as follows:

EXAMINATION BY COUNSEL

FOR PLAINTIFF

BY MR. KELLOGG:

Q Would you give us your name, sir?

A Peter Videnieks.

Q Would you spell that for the reporter?

A V-i-d-e-n-i-e-k-s.

Q Mr. Videnieks, where do you live?

A 903 East Capitol Street, Southeast, Washington.

Q Nice neighborhood. I used to live in the 100
block of Kentucky Avenue.

A Oh, yes.

Q Not too far from there.

1 Can you give us, Mr. Videnieks, a kind of
2 thumbnail sketch of your educational background and your
3 employment history up to the point where you came to
4 work for the Department of Justice?

5 A Sure. Which do you want first?

6 Q Your education first.

7 A Okay. High school, general degree, economics
8 in college and a master's degree in procurement from GW.

9 Q What dates are we talking about?

10 A I think it was '54 college and '72 or '73 from
11 GW, the master's.

12 Q What was your first fulltime job after you go
13 through college?

14 A Internal Revenue Service, revenue officer.

15 Q What sort of work did you do as a revenue
16 officer?

17 A Collect taxes.

18 Q Did you work in the collection branch?

19 A Right.

20 Q Around here locally?

21 A New Jersey and locally. Also went to law
22 school for one semester, but that never materialized.

1 Q Where did you go to law school?

2 A I can't remember.

3 Q Sometime after '63, '64?

4 A Yes. Probably '56, GW, but then again --

5 Q You just went for a semester?

6 A Yes. It was at nights, and I couldn't handle
7 it.

8 Q Did there come a point where you terminated
9 your employment with the Internal Revenue Service?

10 A I went to work for NASA, Goddard Space Flight
11 Center, as in the field of procurement.

12 Q When was that, sir?

13 A '67.

14 Q How long did you work at NASA?

15 A I was there twice, approximately to '72. Then
16 I went to U.S. Customs Service till about '74, then back
17 to NASA '75, then back to Customs around '75-'76, and
18 then '80-'81 I came to Justice.

19 Q All right. Now, at what point in your career
20 in government procurement work did you first serve as a
21 contract officer on any particular government contract?

22 A '68.

1 Q This would have been while you were at NASA?

2 A Right.

3 Q Now, before you did that, before you had that
4 first experience as a contract officer --

5 A It could have been '69.

6 Q Whatever date it was, before you did the first
7 ones, either in your academic work at GW or otherwise on
8 the job, did you receive any formal training as to what
9 the functions of a contracting officer were in respect
10 of a government contract?

11 A Yes. NASA had an excellent structured formal
12 training process. One was considered more or less a
13 trainee up through -- I'm a grade 14 now -- through a
14 grade 11, and there were formal courses and also
15 official trainers assigned were senior people who would
16 rate you and make decisions as to whether you can be
17 promoted or not to the next level.

18 Q They would give you guidance generally on how
19 to?

20 A Sure, guidance and, well, in the formal part
21 of the training there were tests, examinations.

22 Q All right, and I take it your academic work at

1 GW in procurement, did that focus on government
2 procurement practices?

3 A Government procurement.

4 Q You have had some training in that as well
5 about the functions of a contracting officer?

6 A Sure.

7 Q Well, I guess I should preface this question
8 by saying, which is probably obvious to you already, I
9 don't know anything about government contracts and all
10 of the intricacies that innere in them except that I
11 know there are a lot of intricacies.

12 Again, give me kind of a thumbnail sketch of
13 what is the function of a contracting officer in a
14 government contract as you understand it.

15 A Can you be more specific, please? Do you mean
16 the pre-award stage, the post-award stage?

17 Q Well, I take it --

18 A Contract administration?

19 Q I guess I am focusing primarily on the period
20 of time during which the contract is in effect, so it
21 would not be the negotiations but from the time the
22 contract is actually executed until during its

1 performance, during that stage is what I'm focusing on
2 in terms of my question.

3 A That stage is referred to as being the
4 contract administration stage, and typically the
5 procurement person would function as a contract
6 administrator.

7 Q What are the duties of the contracting officer
8 in acting as the contract administrator during that
9 contract administration phase?

10 A Again, I wish you'd be more specific. It's a
11 very general question.

12 The procurement regulations are a two volume
13 looseleaf document.

14 Q I'm just giving you to give me an overview.
15 I'm not asking you to repeat, obviously, every line of
16 two feet of documents

17 A To monitor from a procurement sense the
18 performance of the contract, to see that the effort
19 procured is performed in accordance with the contract;
20 that the government's interests are protected; that the
21 contractor's interests are protected; to issue any
22 necessary contract modifications, negotiate them; again,

1 to see that during the life of the contract the contract
2 reflects changing additions, if there are any.

3 Q Now, you mentioned that among your duties were
4 to both see that the interests of the government were
5 protected in connection with the contract and also to
6 see that the interests of the contractor were protected.

7 Do I take it from that that as a part of your
8 role that the concept of the contracting officer is that
9 you are to be something of an independent person, or are
10 you there simply to protect their best interests in the
11 particular contract?

12 A Would you at least clarify the word
13 "independent"? Obviously, I work for the government.

14 Q I understand.

15 A I'm not a judge.

16 Q I'm just following up. You indicated that
17 part of your duties, a part of a contract
18 administrator's duties would be to see that the
19 government's interests were protected and, as well, to
20 see that the contractor's interests were protected.

21 A Right, and maybe I understand. You asked me
22 about the contractor's interests now?

1 Q Yes. Implicit in that, it seems to me, at
2 least I took it implicit in that, is the notion that
3 your function was not limited indeed to merely
4 protecting the government's interests. Is that a fair
5 statement?

6 A Well, true in the sense this being one
7 example. I advise the technical officers -- I mean the
8 contracting office's technical representative, the COTR,
9 as to what his limitations are. That serves to protect
10 both parties, both the contractor and the government.

11 In other words, it defines the COTR's scope of
12 authority, and based upon this he does not go and direct
13 the contractor to perform acts outside the scope of the
14 contract.

15 Q Let me ask this. Would it be a part of the
16 contract officer's role or duty that if in a given
17 situation the COTR was requesting that the contractor do
18 things that went beyond the scope of the contract, it
19 would be the contract officer's duty to, in effect, sit
20 as a judge on that dispute and decide yeah or nay?
21 Would that be accurate?

22 A It's not accurate because the word "dispute"

1 is not accurate. If there's a difference of opinion as
2 to whether something is within, let's say, a technical
3 direction of the issue, both the contractor and the COTR
4 are advised, have been advised in this case, what they
5 should do if they feel something is outside the scope of
6 the contract.

7 The contractor is advised to contact the
8 contracting officer and advise him that the COTR has
9 requested outside the scope of the contract. Similarly,
10 the COTR is advised not to make requests which are
11 outside the scope of the contract. So the mechanism is
12 there.

13 Q Yes, and the function of the contracting
14 officer within that mechanism is to act, if you will, as
15 an informal arbiter.

16 If the contracting officer feels that the
17 technical direction, for example, is indeed a technical
18 direction, he will issue an administrative order
19 basically ratifying that technical direction. If the
20 contracting officer feels indeed that it was a change
21 order, he would issue a contract modification pursuant
22 to the changes clause.

1 Q So in that sense you do act, the contracting
2 officer would act, you may not want to call it a judge
3 but as an arbiter of any possible disputes on those
4 types of questions between the COTR on the one hand and
5 the contractor on the other. Isn't that right?

6 A Similarly, to the case I just described, the
7 situation I just described, that would be the case.

8 Q In ruling on questions of that sort like you
9 described there, it would be the contract officer's
10 function to perform that duty in an independent way.

11 Now, when I say "independent" in that context,
12 I mean with an independent view of what are the
13 requirements of the contract and not merely from the
14 perspective that you are there trying to protect the
15 interests of the government solely.

16 Is that fair to say?

17 MR. COOPER: Objection to the form of the
18 question.

19 BY MR. KELLOGG: (Resuming)

20 Q You can answer.

21 A I don't like the word "ruling". It implies
22 that a formal ruling as if a judge would make a ruling.

1 Q I mean informal ruling.

2 A As to make my decision as to whether something
3 is a change order or technical direction, subject to
4 administrative approvals, if they apply, I am the
5 authority in that decision. I would sign the document.

6 Q I understand that, and all I'm saying is that
7 just so I understand the concept correctly, the
8 contracting officer's duty in resolving these informal
9 issues of the type that we're talking about here, the
10 contracting officer's duty would be to resolve those
11 issues independently, guided by the contract and the
12 applicable regulations and not guided merely by the
13 parties in interest of a person who is there to do
14 nothing but represent the interests of the government.

15 A Is this a question?

16 MR. COOPER: Object to the form of the
17 question.

18 BY MR. KELLOGG: (Resuming)

19 Q Yes, it's a question. Is that accurate?

20 A It seemed like -- would you please restate it?

21 Q I'm not trying to be tricky here. I'm just
22 trying to make sure I understand.

1 You've testified that in the course of the
2 contract officer's function that if there arise issues
3 about whether something that the COTR wants the
4 contractor to do, whether that is within the contract or
5 not; that is, whether it should be done by the
6 contractor within the contract or, if it is to be done,
7 whether it would have to be the subject of a
8 modification.

9 You have indicated that to decide that type of
10 a question would normally be a part of the contracting
11 officer's function; isn't that right?

12 A Yes.

13 Q All right. Now, my question simply is in
14 performing that function in that setting, isn't it
15 accurate that the contracting officer's duty is to
16 perform that function not guided solely by the partisan
17 interest of the government but rather to be guided
18 independently by the contract and by the applicable
19 regulations?

20 A To be guided by the contracts, the contracting
21 officer, the administering contracting officer
22 administers the contract in accordance with the

1 contract provisions.

2 Q All right, and that if anybody is, in effect,
3 going to be there in connection with the contract, the
4 government contract, to represent the interest of the
5 government alone, that's the COTR and the program
6 manager and so on; isn't that right, not the contract
7 officer?

8 A All government officials involved with the
9 administration of a contract are required to adhere to
10 the provisions of the contract.

11 Q I want to turn to your role in the Justice
12 Department and particularly your goal in connection with
13 this INSLAW contract that is the subject of this
14 litigation.

15 I take it, you say, you sent to work at
16 Justice in 1980 or 1981; is that right?

17 A Right.

18 Q What part of the Justice Department did you go
19 to work for?

20 A Justice Management Division.

21 Q All right. Now, I take it there came a time
22 after you went to work at the Justice Management

1 Division that you were assigned to. I believe the phrase
2 is to conduct a competitive procurement in respect of
3 what became this INSLAW contract. Isn't that right?

4 A Right.

5 Q About what time, to your recollection, was the
6 first time you ever heard of this proposed contract?

7 Let me take that back. I don't mean proposed
8 contract. I mean when did you first hear that you would
9 be or you might be assigned to this project, this
10 competitive procurement?

11 A Probably a week or so before I reported for
12 work at the Justice Department. My future supervisor
13 even gave me a copy of the draft work statement which
14 was to be used in the competitive request for proposals.

15 Q Who was your then proposed supervisor?

16 A Patricia Rudd.

17 Q Patricia Rudd?

18 A Yes. R-u-d-d.

19 Q May I infer from that that you were brought
20 over there or that you went over there with the specific
21 view to undertake in this particular project, or was
22 that just a happenstance?

1 A I even learned during the interview process or
2 somewhere along the line that that would be one of my
3 assignments.

4 Q Well, let's put it this way. When you were
5 interviewed, in the course of going to JMD did they
6 indicate that this was the reason that they were looking
7 for another person to act as a contract officer, because
8 they had this particular project and someone needed to
9 work on it?

10 A I don't recall. I was hired. The job was
11 advertised as, I believe, supervisory contract
12 administrator. Upon being hired by Justice Department,
13 I was assigned this task, basically to see the PROMIS
14 procurement through.

15 Q At the time that you were sent a draft of the
16 work statement by Patricia Rudd, had you already been
17 hired but the paperwork was just not completed?

18 A I think so. I think that was the case.

19 Q When was this, roughly?

20 A It would have been a week or so before I
21 reported to work, 1980 or '81, the fall.

22 Q All right, fall of '80 or '81. All right.

1 Now, when you get to work, how long after you
2 get to work do you ever come into contact with this
3 proposed project again?

4 A I imagine pretty quickly.

5 Q Within a few days?

6 A I would say so, yes.

7 Q Now, before you went to JMD, in the course of
8 your other work at NASA and Customs and so on, had you
9 had occasion to act as a contract officer in connection
10 with computer software contracts?

11 A Yes.

12 Q About how many?

13 A I cannot estimate.

14 Q Less than 100?

15 A Less than 100.

16 Q Less than 50?

17 A Less than 50.

18 Q Less than 25?

19 A I would have to guess at that point.

20 Q Now, apart from that experience, did you have
21 any training or particular specialized knowledge in
22 computer software?

1 A From a technical aspect?

2 Q Yes.

3 A The answer is yes but not much.

4 Q So in the course of your work, previous work
5 administering these contracts, would you pretty much
6 rely on some other technical person for technical advice?

7 A Throughout my career, true.
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1 Q Now you get over there to JMD, and Patricia
2 Rudd has already given you a copy of this draft work
3 statement.

4 What is the next thing that happens in terms
5 of your involvement with this executive office of U.S.
6 Attorney's project?

7 A I prepare a solicitation document.

8 Q Now, when you say a solicitation document, is
9 this, you know, again my knowledge is so sketchy, is
10 this what they customarily refer to as a RFP, request
11 for proposaal?

12 A In this case, no. In this case, it was a
13 request for industry comment.

14 Q Tell me what's the difference?

15 A It's a preliminary document. It's basically
16 asking industry to comment on the government's
17 requirement as to whether it's current, and maybe
18 whether it's restrictive or not, that kind of thing.

19 Q When you say comment, I take it that what you
20 are looking for is comment from people or entities that
21 might be interested in being bidders, asking whether or
22 not they could or would be willing to bid on a

1 solicitation of this sort, if it were framed in this way?

2 A Partly. Also, for their suggestions, how the
3 requirement could be better met.

4 Q Now, before you did that, either before or
5 after you went to work there, did you go and talk with
6 anybody in the executive office of the U.S. Attorney's
7 regarding what their needs were and get any input from
8 them?

9 A Before I came to work for the Justice
10 Department?

11 Q Either before you came to work, or in any
12 event, before you prepared this solicitation document.

13 A Well, the heart of the solicitation document
14 is a statement of work or specifications, which
15 typically is originated by the program or technical
16 office.

17 Q And in this case it was originated by the
18 people in the executive office of the U.S. Attorneys?

19 A That's right.

20 Q But my question is, in connection with your
21 review of that, and taking that and preparing the
22 solicitation document, did you have any occasion to have

1 any discussions with anybody in the executive office of
2 U.S. Attorneys?

3 A There were -- the executive office of U.S.
4 Attorneys at that time was located, the program office,
5 Patricia Goodrich was the program manager. She was
6 located I believe on the first floor of the same
7 building I was in during this process, the preaward
8 procurement process.

9 There was continuous interface between the
10 program office and the procurement office.

11 Q Okay, so you met with Patricia Goodrich during
12 this period of time frequently?

13 A Right.

14 Q And discussed the statement of work?

15 A Sure.

16 Q And all of the aspects that went into your
17 preparation of the solicitation document?

18 A Yes.

19 Q And roughly how long after you went to work
20 did you issue the solicitation document?

21 A The request for industry comment, I believe,
22 were issued -- I am guessing -- about two months after I

1 reported for work at the Justice Department.

2 Q Now, you indicated that your recollection is
3 that -- strike that.

4 Let's go off the record.

5 (Discussion off the record.)

6 BY MR. KELLOGG: (Resuming)

7 Q All right, off the record, we had a brief
8 discussion trying to pinpoint whether or not you went
9 to work in the fall of '80 or the fall of '81, and I
10 guess everyone's best recollection is, in light of other
11 events, it probably was the fall of '81, correct?

12 A Correct.

13 Q So that assuming that to be correct, would it
14 be somewhere say in the neighborhood of October,
15 November of '81, that you would have issued the request
16 for industry comment?

17 A Correct.

18 Q And how long after that did you get comments
19 back from industry?

20 A I don't recall how much time we gave for
21 comments. It could have been 30 days. It could have
22 been as short a fuse as 15 days.

1 Q All right. And I take it that you got
2 industry comment back, included in that you got some
3 kind of response from Inslaw, didn't you?

4 A I can't specifically recall, but I'm pretty
5 sure I did.

6 Q All right, now, when you got that, those
7 comments back, whenever you got them and from whomever
8 you got them, were you involved in evaluating those
9 comments?

10 A The comments were, if I remember correctly,
11 primarily technical in nature. I don't have the
12 technical expertise, so I did not evaluate them from a
13 technical viewpoint.

14 I was involved in incorporating the comments
15 in the eventual RFP.

16 Q Once you get the responses to your request for
17 industry comment, do you have any occasion to discuss
18 them with the people in the executive office of U.S.
19 Attorneys?

20 A Yes, I do.

21 Q And here, again, are you still talking to
22 Patricia Goodrich?

1 A I think so. Patricia Goodrich, Carol Sloan.
2 Q Who else?

3 A Jack Rugh I believe was on board at the time.
4 Q Anybody else?

5 A I don't -- I don't think so, that I recall.
6 Q Was Mr. Brewer on board at that particular

7 time?

8 A No.

9 Q Now you get the comments. They are reviewed
10 primarily by the technical people at the executive
11 office.

12 A Also, some comments may have been of the
13 nature that the procurement is restricted and slanted
14 towards, at that time, the incumbent on the pilot
15 project.

16 Q Which was Inslaw?

17 A Right, those comments were resolved.

18 Q What do you mean by that, resolved?

19 A In other words, they were reviewed by the
20 program office, and procurement office, and considered
21 the RFP was released.

22 There were some changes made to the RFP. It

1 was released.

2 Q All right, so ultimately, the RFP that went
3 out, you were satisfied, and the people in the executive
4 office were satisfied, that as the RFP was released in
5 that form, it was not unfairly slanted.

6 A Restricted; restricted competition. The
7 concern in these situations is restricted competition.

8 Q And you were satisfied that it wasn't
9 restrictive in the form it was released?

10 A Yes.

11 Q About when was it that the RFP was released?

12 A December of '81.

13 Q All right, December of '81.

14 Now, at that point, had Mr. Brewer come on
15 board yet?

16 A I don't think so.

17 Q How long after that did you get responses from
18 the RFP?

19 A I can't recall whether the time for responses
20 was 30 days or 45 days.

21 Q All right, but it was one of the two?

22 A Yes, to the best of my knowledge.

1 Q Anyone else during that period of time, the
2 evaluation of the RFP responses?

3 A There was an individual assigned to
4 participate from another organization on the evaluation
5 panel. I can't recall his name.

6 Q But he did not work in the executive office of
7 U.S. Attorneys?

8 A He may have, he may have worked in another
9 part of the executive office, or even outside the
10 executive office.

11 I remember, I think it was an older individual
12 who shortly thereafter retired, but I don't recall his
13 name.

14 Q All right. Here again, was Mr. Brewer
15 involved at all at this point regarding the evaluation
16 of the responses to the RFP?

17 A To the best of my knowledge, no. I can guess
18 at which point Brewer --

19 Q Why don't you tell me now, to your
20 recollection at which point did he become involved?

21 A During the negotiations with Inslaw.

22 Q All right. After you get the comments --

1 strike that -- not the comments, but the responses to
2 the RFP, within what timeframe is a decision made to
3 select a particular contractor, and then begin the
4 process of trying to negotiate a contract?

5 A It varies with the number of proposals
6 received.

7 Q In this case?

8 A Well, your question wasn't phrased that way.

9 MR. COOPER: I object. Do you want to frame
10 your question in connection with this case.

11 MR. KELLOGG: I thought I said this case. If
12 I didn't, I intended to.

13 BY MR. KELLOGG: (Resuming)

14 Q In this case, how long after you got the
15 responses to the RFP was there a decision made to select
16 a particular proposal and then start to negotiate a
17 contract?

18 A I don't recall. Typically what the
19 contracting officer does is to separate, take a look at
20 the proposals from cost proposals, and then submit by
21 memorandum the technical proposals through the technical
22 evaluation panel.

1 Then he gives them a time for a response.
2 That time could vary from two weeks to six weeks or
3 more. I think in this case, we may have given them two
4 weeks.

5 And subsequent to that, the contracting
6 officer determines a competitive range as to who is in
7 the zone of consideration, and then the next step is
8 negotiations.

9 Q All right, I take it then that at some point
10 you determined that Inslaw was within the competitive
11 zone?

12 A Right.

13 Q And was there anybody else in the competitive
14 zone?

15 A I don't think so. I think there were two or
16 three people who submitted proposals.

17 Q A total of two or three submitted responses to
18 the RFP?

19 A Correct.

20 Q And of those, your recollection is that Inslaw
21 was the only one you determined to be in the competitive
22 zone?

1 A I think correct. To the best of my
2 recollection.

3 Q So you got Inslaw, the only one you can
4 remember in the competitive zone. And what happens
5 after that?

6 A We negotiated with Inslaw.

7 Q Who participates in the negotiation process on
8 the side of the government?

9 MR. COOPER: In this case, counsel?

10 MR. KELLOGG: Yes, in this case.

11 THE WITNESS: The contracting officer and
12 personnel from the program office, and personnel from
13 the audit staff.

14 BY MR. KELLOGG: (Resuming)

15 Q Well, to your best recollection, who were
16 those people in this case? Obviously yourself, but who
17 in addition?

18 A An interim step, which was left out, is a
19 second set of technical evaluations, basically to
20 concentrate on the contract, or cost proposal, the
21 reasonableness of the loading, and so forth.

22 Then after that is done, negotiations take

1 place, and a negotiation team was composed of me, Pat
2 Goodrich, there was a project director, Jack Rugh, Bob
3 Whiteley.

4 Q And I take it Mr. Whiteley was the person from
5 audit?

6 A Correct.

7 Q He worked in the Justice management division
8 audit section at the department, or whatever it's called?

9 A Right.

10 Q And roughly what period of time did these
11 negotiations cover?

12 A I think they may have covered -- the contract
13 was signed on March 16 of '82. I think negotiations may
14 have covered, including time for submittal of best and
15 final offers and clarifications, a couple of months.

16 Q All right. So that --

17 A So two or three months, because the initial
18 proposal, as submitted by the contractor, offer at that
19 time needed to be significantly revised to enable
20 meaningful negotiations.

21 It was above the budgetary means of the
22 government.

1 Q And what was the original proposal in dollar
2 terms?

3 A If I remember correctly, it must have been \$18
4 million.

5 Q And the budget framework was what?

6 A If I have to guess, it must have been \$6- to
7 \$8 million; maybe less than that, maybe \$5 million less;
8 a significant difference.

9 Q In any event, somewhere by the 15th, 16th of
10 March, the negotiations are concluded, and you get an
11 executed contract with Inslaw; isn't that right?

12 A Right.

13 Q Now, you had indicated earlier in your
14 testimony that your best recollection was that Brewer
15 came on board, Mr. Brewer came on board sometime during
16 the conduct of these negotiations, before the contract
17 was actually signed; that's correct?

18 A That's correct.

19 Q Did he participate, to your recollection, in
20 any of the negotiations that led up to the execution of
21 the contract, March 16, '82?

22 A Yes.

1 Q For what period before the execution of the
2 contract did he participate?

3 A I can't recall.

4 Q Well, would it have been as long as two weeks?

5 A Longer, I feel, but I can't guessed. I think

6 Brewer stepped in at the midpoint of the process.

7 Q So something in the range maybe of a month

8 before the execution of the contract?

9 A I don't want to guess; I really can't remember.

10 Q Whatever the date was that he came in, did he
11 play an active role in the negotiations from the time he
12 got involved?

13 A Yes.

14 Q Would you say that on the side of the program
15 people that he played the dominant role?

16 A No.

17 Q Who did?

18 A I felt I was fairly dominant.

19 Q That wasn't my question. I didn't mean
20 dominant, embracing everyone in the department who was
21 involved, but simply from the program office, that is,
22 the executive office people who were involved in the

1 negotiations.

2 Would it be fair to say that he played a
3 dominant role once he became involved, Mr. Brewer?

4 MR. COOPER: Objection to your question. You
5 haven't laid a foundation that Mr. Videnieks was present
6 at all negotiation sessions which were attended by the
7 executive office of the United States Attorneys.

8 MR. KELLOGG: Well, I'm limiting the question
9 to those that he knows about.

10 THE WITNESS: I think Brewer played a dominant
11 role among the EDUSA personnel. However, not -- he
12 played a dominant -- he was an active participant,
13 because he was brand new, newly on board. And he was an
14 active participant.

15 BY MR. KELLOGG: (Resuming)

16 Q Now, after he came on board, did you and he
17 ever have what I would call an initial meeting, kind of
18 a get acquainted session in which he sat down with you
19 and described generally how he wanted to proceed and
20 wanted to solicit your views?

21 I'm making this up, but I'm asking, was there
22 an initial meeting at any point after Brewer came on

1 board, between yourself and Mr. Brewer about the whole
2 issues, the whole contract?

3 A We met, during the course of our duties, to
4 the best of my recollection. There was no specific
5 meeting to be meant as an introductory meeting. There
6 was no such meeting.

7 Q Well, did you have a meeting with Mr. Brewer
8 alone early on once he became involved?

9 A I don't recall any such meeting. There may
10 have been a meeting where he met -- if I remember
11 correctly, he didn't even have an office at the main
12 Justice building for some time, and then he shared an
13 office or had a temporary office there for some time.

14 And he had other duties in his prior
15 occupation, so he was not readily available.

16 And I don't recall ever having a meeting with
17 him, other than as events dictated.

18 Q In the course of whatever meetings that you
19 did have, that he attended and you attended in this
20 early period, and I'm talking now before the contract
21 was actually executed, did Mr. Brewer ever indicate to
22 you that he had been employed previously at Inslaw?

1 A I can't recall how I came to learn and when
2 Mr. Brewer had ever been employed at Inslaw.

3 Q So my question is, did Brewer ever tell you
4 that. Is your answer that you don't recall him telling
5 you that?

6 A That's my answer.

7 Q But he may have?

8 A He may have, yes.

9 Q Because at some point you did learn that --

10 A Whether it was from Brewer or from someone
11 else, that I cannot recall.

12 Q Do you recall Mr. Rugh ever telling you that
13 Mr. Brewer had formerly been employed at Inslaw?

14 A I don't recall that, no. He may have.

15 Q Do you recall Mr. Brewer, again now, focusing
16 on this period before the execution of the contract, do
17 you recall Mr. Brewer saying anything about his knowing
18 Mr. Hamilton?

19 A I don't recall that, but he may have. I don't
20 recall whether Mr. Hamilton participated in the
21 negotiations or not. Obviously, if Mr. Hamilton
22 personally participated in the negotiation, then the two

1 would have met, and I would have learned that.

2 Q Well, I know obviously if they both
3 participated they would have met during those
4 negotiations, but my question is, did Brewer ever tell
5 you that he knew Mr. Hamilton prior to these
6 negotiations?

7 A I don't recall how or when I learned that.

8 Q But at some point, you did learn that he and
9 Mr. Hamilton knew each other well before this contract
10 began?

11 I don't mean you learned it before the
12 contract began, but you learned at some time that Mr.
13 Hamilton and Mr. Brewer had known each other for a
14 number of years before this?

15 A I learned it sometime.

16

17

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22

1 Q Did you learn that in the first several months
2 of the contract or within the first few months that the
3 contract was in effect? I know you can't pinpoint it.

4 A I could have, but I don't recall.

5 Q Do you think you learned it in the first year
6 that the contract was in effect?

7 A I think I did.

8 Q Did Mr. Rugh ever tell you that Mr. Rugh and
9 Mr. Hamilton had known each other for a long time?

10 A I don't recall. I don't think so. He may
11 have.

12 Q Now, when Mr. Rugh became involved in the
13 precontract negotiations in early 1982 or, any event,
14 the time preceding the execution of the contract, would
15 you say that he expressed enthusiasm for the PROMIS
16 software? Did he ever express enthusiasm about the
17 software to you?

18 A Brewer or Rugh?

19 Q Brewer.

20 A Brewer. During the competitive negotiations?

21 Q Yes.

22 A I don't recall. In other words, I requested

1 formal technical evaluations of the proposals received.
2 I received formal memoranda back addressing strong and
3 weak points of those proposals, and I don't think Brewer
4 signed them. I think that was by Goodrich.

5 Q Pat Goodrich, I take it she was a technical
6 person?

7 A She was -- Brewer replaced Pat Goodrich as
8 program manager.

9 Q All right. Well, apart from any written
10 memoranda, my question is do you recall Brewer ever
11 expressing any enthusiasm about the PROMIS software
12 during this period of time?

13 A I don't recall it.

14 Q Do you recall Mr. Brewer criticizing the
15 PROMIS software at any time during this precontract
16 period?

17 A I don't recall.

18 Q Do you recall Mr. Rugh expressing any
19 enthusiasm for the PROMIS software during that
20 precontract period?

21 A Formally he signed the technical evaluation
22 report which stated that the proposal as submitted by

1 INSLAW, subject to some clarifications, is technically
2 acceptable, and he either prepared -- I don't know
3 whether he signed it or Pat Goodrich signed it alone,
4 but he was instrumental in seeing that the proposal is
5 good.

6 Q So that, at the very least, he felt the
7 proposal was satisfactory from his perspective at that
8 time?

9 A Correct.

10 MR. KELLOGG: I'm going to ask the reporter to
11 mark this as Videnieks Deposition Exhibit 1, please.

12 (The document referred to
13 was marked Videnieks Exhibit
14 No. 1 for identification.)

15 BY MR. KELLOGG: (Resuming)

16 Q Mr. Videnieks, if you take a look at what has
17 been marked as Videnieks Exhibit 1, and if you will look
18 at page 2-153 -- I take that back. Make it 152.

19 I guess, first of all, I'll just tell you that
20 this document was a part of INSLAW's response to the RFP.

21 A Original proposal or amendment afterwards?

22 Q Original proposal.

1 Can I just ask you to look it over generally,
2 first of all, and tell me if you have any recollection
3 of ever seeing it before? This is just a part of it,
4 not the whole thing.

5 (Pause.)

6 I didn't mean to limit your review of this to
7 page 152. I got ahead of myself.

8 The question is do you recall ever seeing this
9 whole thing before?

10 A If this is an INSLAW proposal, I have not read
11 it but I have seen it.

12 Q Go ahead and read it over to see if you have
13 any recollection of ever seeing it before.

14 (Pause.)

15 A I read page 2-152.

16 Q Well, my question, I guess, is in light of
17 that do you have any recollection as you sit here today
18 if having received what's been marked here as Exhibit 1
19 as a part of INSLAW's response, initial response, to the
20 RFP back in late '81 or early '82, whenever it was?

21 A It appears to be a part of INSLAW's proposal.

22 Q I want to call your attention to -- well,

1 first of all, on page 2-152 there is a section beginning
2 with B. It is labeled System Enhancements and New
3 Modifications and describes various enhancements and
4 modifications.

5 In particular, I call your attention to the
6 last sentence on page 2-152, the sentence that begins,
7 "In addition to the specially funded enhancements,
8 improvements funded by other sources and developed and
9 accepted for inclusion in the software supported by
10 INSLAW will be made available to the U.S. Attorneys
11 Offices."

12 Do you have any recollection as you sit here
13 today of being aware of this part of the document when
14 you received it or after you reviewed it?

15 A I don't specifically recall the number of
16 pages which you have placed in front of me. I do recall
17 the data rights issue as negotiated and the positions
18 taken by parties generally.

19 Q I guess my question is do you recall it being
20 an issue at this point in time?

21 A What point in time?

22 Q The time of INSLAW's initial response to the

1 RFP.

2 A During the proposal evaluation stage? We're
3 looking at an undated piece of paper.

4 Q But I'm telling you as just you can assume for
5 the sake of argument that this was a part of INSLAW's
6 response, initial response to the RFP. I don't have a
7 precise date, but it would have been sometime, I take
8 it, in early '82 before the contract was executed.
9 Correct?

10 A I didn't hear your question. It's difficult
11 to follow. There's no question mark at the end. It's a
12 statement, and I have difficulty following you, sir.

13 Q You have testified that you remember the data
14 rights issue. My question simply is do you recall
15 INSLAW's calling your attention to the fact that the
16 system they proposed to deliver to the Department under
17 the then proposed contract would include privately
18 funded enhancements?

19 MR. COOPER: You're asking that question not
20 related to this document?

21 MR. KELLOGG: I am asking it, yes, unrelated
22 to the document.

BY MR. KELLOGG: (Resuming)

1
2 Q Do you recall that ever coming to your
3 attention?

4 A I recall the part of the negotiations that
5 dealt with data rights and the fact that the government
6 demanded and received in the contract unlimited rights
7 to data delivered under the contract.

8 Q You're not answering my question.

9 A This sentence does not jump out at me from
10 three or four or five years ago.

11 MR. COOPER: Nor does that sentence say
12 anything about privately funded enhancements, I would
13 add.

14 BY MR. KELLOGG: (Resuming)

15 Q Just answer my question, and I'll try to make
16 it simple and concise.

17 My question is do you recall INSLAW calling to
18 your attention before the contract was executed on
19 March 15, 16, whatever it was, 1982, that they intended
20 to provide software that included privately funded
21 enhancements?

22 A I specifically don't recall that.

1 Q Would you deny that they made you aware of
2 that, sir?

3 A I think in the documentation there is
4 reference to during the negotiation process both sides
5 took positions, and I think that INSLAW may well have
6 taken such a position in their written material.

7 Q So you very well could have been aware that
8 they contended that this was what they were going to do
9 during the negotiation stage?

10 A I could have been aware.

11 MR. KELLOGG: I ask that this be marked as
12 Videnleks Exhibit 2, please.

13 (The document referred to
14 was marked Videnleks Exhibit
15 No. 2 for identification.)

16 (A brief recess was taken.)

17 BY MR. KELLOGG: (Resuming)

18 Q Mr. Videnleks, if you could take a look at
19 what's been marked as Exhibit 2. It appears to be, the
20 first page of it appears to be an undated letter to
21 INSLAW signed by yourself attaching a number of --
22 several pages that contain a number of questions.

1 Just look that over and tell me whether you've
2 ever seen it before.

3 A I've seen this, yes.

4 Q Is this letter plus the attachment that is
5 appended to it, did you send this letter to INSLAW in
6 response to their initial response to the RFP?

7 A Yes.

8 Q Even though it doesn't have a date, down at
9 the third paragraph from the bottom that you ask that
10 they provide you the clarifications and so forth by the
11 close of business January 13, 1982.

12 A Right.

13 Q I assume from that that this letter would have
14 been dated sometime before January 13, 1982?

15 A Correct.

16 Q Now, were you involved in the preparation of
17 the attachment, Mr. Videnieks?

18 A No. I may have added to it, cleaned it up.
19 Well, that's involvement but not from the technical
20 point of view.

21 Q I take it that you would have read it before
22 you sent it over with your cover letter, isn't that

1 right?

2 A Sure.

3 Q All right. If you take a look at page 3 of
4 the attachment, the item marked Task 9, Support and
5 Maintenance and subpart B, there is a question there.
6 "Why does the offeror consider the data base adjustment
7 software to be proprietary?"

8 Do you remember reading that question when you
9 reviewed that document before you sent it over to
10 INSLAW, sir?

11 A I don't specifically remember that question
12 alone, but I do remember the letter and the attachment.

13 Q Is it fair to infer that this question, this
14 is question 9B in the attachment, was a result of the
15 statements that INSLAW had made in its initial response
16 to the RFP on page 2-152 that I called your attention to
17 earlier?

18 A The attachment relates to the proposal.

19 MR. COOPER: To the specific pages?

20 BY MR. KELLOGG: (Resuming)

21 If you will notice, take a look at the front
marked as Exhibit 1, the first page. You

1 notice it says Task 9, Maintenance and Support?

2 A Correct.

3 Q And if you turn to page 2-152, it says B,
4 letter B, System Enhancements and New Modifications.

5 A Correct.

6 Q Well, if you look back to page 3 of the
7 attachment to Exhibit 2, that refers to Task 9, System
8 and Maintenance, Part B.

9 Now, in light of all that, my question is is
10 it fair to infer that this question 9B on page 3 of the
11 attachment was a result of the materials that I referred
12 to here on page 2-152 of Exhibit 1?

13 A The question is directed to Task 9 of INSLAW's
14 proposal.

15 Q It's addressed to Section B of Task 9, isn't
16 that right?

17 A Yes. It appears to be. It is numbered B.

18 Q In Section 9B of INSLAW's response, they did
19 mention, among other things, in addition to the
20 specially funded enhancements, "improvements funded by
21 other sources and developed and accepted for inclusion
22 in the software and supported by INSLAW will be made

1 available to the U.S. Attorneys Offices."

2 That language is contained in there, isn't it?

3 A Yes, sir. You were reading it, right?

4 Q Yes.

5 MR. COOPER: In Exhibit 1.

6 MR. KELLOGG: In Exhibit 1.

7 BY MR. KELLOGG: (Resuming)

8 Q Let me ask you this question. Can you point
9 to anything else in Section 9B of INSLAW's initial
10 response to the RFP as it is marked there, Exhibit 1,
11 that would have prompted this question 9B on the
12 attachment to your January '82 letter other than the
13 language that I'm talking about?

14 A I'd have to read the proposal in detail. I
15 have not read all the pages you gave me.

16 Q Well, read 9B.

17 A Okay, I'll take some time and read it.

18 MR. COOPER: Counsel, just to state for the
19 record, I believe it was you, counsel, who inferred that
20 A, B and C under Task 9 relate to the specific
21 subsections. I don't know whether or not that inference
22 is valid because each of the sections, it might have

1 just been like a 1, 2, 3.

2 (Pause.)

3 BY MR. KELLOGG: (Resuming)

4 Q Do you remember the question?

5 A No, please restate it.

6 Q The question is after reviewing Section 9B of
7 INSLAW's initial response to the RFP as it is contained
8 there in Exhibit 1 before you, can you point to any
9 other part of that Section 9B of the initial response
10 that would have prompted the question set forth at Task
11 9B, page 3 of the attachment to your letter to INSLAW,
12 in January of '82?

13 MR. COOPER: I object to the form of your
14 question, counsel. The witness did not point to that
15 sentence that you referred to. You pointed to that
16 sentence.

17 So to the extent that your question assumes
18 that the witness has referred to that sentence as part
19 of the answer, there is no predicate laid for it, and
20 the form of your question is improper.

21 MR. KELLOGG: I'm not saying he did point to
22 it. Obviously I pointed.

1 My question is can he point to anything else
2 in INSLAW's proposal or response, initial response in
3 Exhibit 1, Section 9B of that that would have prompted
4 this question 9B at page 3 of the attachment to Mr.
5 Videnieks' letter except the sentence that I had
6 referred to earlier.

7 MR. COOPER: I make the same objection. I'm
8 not trying to tell you how to ask your questions, but
9 perhaps maybe to ask the question if there's anything in
10 this section that he can recall that prompted that.

11 MR. KELLOGG: Your objection is noted. I will
12 stick with this question.

13 THE WITNESS: I don't know what prompted the
14 question, but I don't see anything else in there.

15 MR. KELLOGG: I ask that this be marked as
16 Videnieks 3.

17 (The document referred to
18 was marked Videnieks Exhibit
19 No. 3 for identification.)

20 BY MR. KELLOGG: (Resuming)

21 Q I ask you to review that, Mr. Videnieks,
22 what's marked as Exhibit 3. It's a letter to you, a

1 copy of a letter to you from Dean Merrill dated
2 January 14, 1982, together with what's labeled Amendment
3 to Proposal.

4 I can save you some time. If you turn to page
5 9 of the attachment which deals with under Section B
6 there that deals with Section 9B of the proposal.

7 For the record, the discussion in the
8 attachment of Task 9 begins at the bottom of page 8.

9 Does that appear to be -- The section I
10 referred you to on page 9, does that appear to be a
11 response to the question under Task 9B that was in the
12 attachment to your earlier January '82 letter to INSLAW?

13 A Yes.

14 Q Would it be fair to say that in this document
15 what's marked here as Exhibit 3 INSLAW was asserting
16 that it had proprietary rights in its software?

17 A At this point in contract negotiations,
18 INSLAW's position appears to reflect that position.

19 Q If you look specifically in that page 9,
20 subsection B there, the sentence beginning "subsequent
21 to May 1981", and not just the sentence but that whole
22 paragraph, did that appear to be an assertion by INSLAW

1 that its software contained privately funded
2 enhancements?

3 A The first sentence states, makes a statement
4 as to when INSLAW began receiving funding.

5 Q From nonfederal sources, isn't that right?

6 A Right.

7 Q The second sentence goes on to indicate that
8 they made certain data base adjustments under that
9 funding, the nonfederal funding; isn't that right?

10 A That's what it says.

11 Q So my question is it was clear at that point
12 that INSLAW was claiming that their software included
13 privately funded or nonfederally funded enhancements;
14 isn't that right?

15 A At that point in the negotiations they took
16 that position.

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1 Q Now, during this period of negotiations prior
2 to the contract, prior to the execution of the contract,
3 do you recall a session in which Mr. Brewer was critical
4 of Inslaw's work?

5 A Prior to award of the contract?

6 Q Yes.

7 A No.

8 Q You wouldn't deny that he may have made a
9 statement during some of those meetings that was
10 critical of Inslaw's work, would you?

11 A During the negotiations of the contract that
12 led up to the award of the particular contract we're
13 talking about?

14 Q Yes.

15 A I don't recall him making any kind of a
16 statement like that.

17 Q But I say, you wouldn't deny that he made such
18 a statement. You just don't recall it, that's your
19 testimony?

20 A I would probably deny that he made it to me.

21 Q Or in your presence?

22 A I don't recall it. I don't recall it in a

1 Q Now, during this period of negotiations prior
2 to the contract, prior to the execution of the contract,
3 do you recall a session in which Mr. Brewer was critical
4 of Inslaw's work?

5 A Prior to award of the contract?

6 Q Yes.

7 A No.

8 Q You wouldn't deny that he may have made a
9 statement during some of those meetings that was
10 critical of Inslaw's work, would you?

11 A During the negotiations of the contract that
12 led up to the award of the particular contract we're
13 talking about?

14 Q Yes.

15 A I don't recall him making any kind of a
16 statement like that.

17 Q But I say, you wouldn't deny that he made such
18 a statement. You just don't recall it, that's your
19 testimony?

20 A I would probably deny that he made it to me.

21 Q Or in your presence?

22 A I don't recall it. I don't recall it in a

1. very strong emotion.

2. Q. Do you recall in words or substance, Mr.
3. Brewer saying words to the effect that prosecutors in
4. Michigan and in Colorado didn't think much of Inslaw's
5. work or they didn't think it was very good or words to
6. that effect?

7. A. I don't recall that. This would have been in
8. negotiations with Inslaw?

9. Q. That's correct, during the negotiation
10. sessions attended by representatives of the government
11. and Inslaw.

12. A. I don't recall that.

13. Q. Do you recall Mr. Brewer making statements
14. like that at anytime?

15. A. About -- no. About Michigan.

16. Q. Not about Michigan or Colorado. Do you recall
17. him making statements that he didn't think much of
18. Inslaw's work or being critical of Inslaw's work at
19. anytime?

20. A. At any time prior to award of the contract?

21. Q. At anytime?

22. A. When we had difficulties with the

1 implementation of the word processing sites, where
2 Inslaw fell significantly behind the contract schedule,
3 there were discussions among concerned personnel,
4 expressing concern about the fact that Inslaw had fallen
5 behind schedule.

6 Q And Brewer was among those?

7 A Sure, he was the manager. He was responsible
8 to see that that promise was implemented on time.

9 Q And so he expressed criticism of Inslaw at
10 that time, is that right?

11 A He commented on the unfortunate fact that the
12 contract had slipped significantly.

13 Q That's being critical of Inslaw, isn't it?

14 MR. COOPER: Objection, counsel.

15 THE WITNESS: It's being critical of
16 performance under the contract.

17 BY MR. KELLOGG: (Resuming)

18 Q I want to go back for a minute to this Exhibit
19 3. When you received this from Mr. Merrill, what did
20 you do with it?

21 A I forwarded this material to the technical
22 evaluation panel.

1 Q And did you have any further involvement in
2 their evaluation of this response to the questions?

3 A Probably I asked the technical evaluation
4 panel to make a statement as to whether Inslaw's
5 proposal is now technically acceptable.

6 I think at first the basic proposal was
7 conditionally acceptable based on clarifications of
8 certain points.

9 Q Now, do you recall at any point during the
10 pre-contract negotiations, any discussion with anyone on
11 behalf of Inslaw in which they, the Inslaw people,
12 objected to the -- I guess I would call it the standard
13 government data rights clause that had been contained in
14 the RFP?

15 A In the RFP, the clause, the data rights clause
16 contained in the RFP remains in the contract.

17 Q Was there a different data rights clause
18 contained in the initial solicitation document?

19 A The solicitation document contained a schedule
20 article.

21 Q What is that?

22 A It's an order of precedence. It would take

1 precedence over the boilerplate clauses in the contract.

2 Q Does that mean it was different from what was
3 in the RFP, the data rights clause in the RFP?

4 A There were two provisions of the RFP that
5 dealt with data rights. The data rights clause which
6 currently remains in the contract, and a schedule
7 article which contained a sentence which Inslaw felt
8 would restrict their rights to market, promise to other
9 people.

10 Because of that concern of Inslaw's during
11 negotiations, the schedule article was excluded. It was
12 agreed to exclude it from the actual contract.

13 Q And was something else substituted for the
14 scheduled article?

15 A Nothing. Inslaw's basic concern was not data
16 rights, but the ability to market.

17 Q If they didn't have the data rights, they
18 couldn't market it, could they?

19 A You should read that article, sir. It's three
20 sentences.

21 MR. KELLOGG: All right. Mark this as Exhibit
22 4, please?

1 (The document referred to
2 was marked Videnieks Exhibit
3 No. 4 for identification.)

4 BY MR. KELLOGG: (Resuming)

5 Q Take a look at Exhibit 4 if you will.

6 Mr. Videnieks, I see that we have got an
7 obvious mistake in the second page, because I see it's
8 something that has a date of August 11, 1982.

9 MR. COOPER: Can we just rip that out? Can we
10 rip page two out?

11 MR. KELLOGG: That was not intended to be a
12 part of that, and if we just discard it, we will start
13 over again.

14 MR. COOPER: There are some other attachments
15 to it.

16 MR. KELLOGG: After the signature, just take
17 that out also. That's a mistake.

18 You should end up with a three-page letter
19 dated March 1, 1982, to you from Mr. James Kelly, then
20 general counsel of Inslaw.

21 BY MR. KELLOGG: (Resuming)

22 Q Is that a copy of a letter that Mr. Kelly sent

1 to you on March 1, 1982?

2 A Yes, sir.

3 Q Now looking at page 2, paragraph labelled with
4 the Roman number IV, rights in data.

5 A I'm looking at it.

6 Q And it says there, the rights in data clause
7 as found in the RFP, section C, award/contract, comma,
8 article 12, shall be deleted.

9 Now, does this ring any bells with you as to
10 what it was that was deleted? Do you recall this?

11 A I don't have the contract in front of me, but
12 I believe article 12 was deleted as a part of the total
13 negotiation package; it was deleted.

14 Q You had indicated it was your recollection
15 that there were two provisions in the RFP that dealt
16 with data rights.

17 One was what you called the data rights
18 clause, and the other was something you called a
19 schedule article?

20 A Which is article 12, referred to here. I
21 believe it's 12.

22 MR. COOPER: Do you want to break here and get

1 the RFP to examine him with after lunch?

2 MR. KELLOGG: Yes, let's mark this as the next
3 subject.

4 (The document referred to
5 was marked Videnicks Exhibit
6 No. 5 for identification.)

7 BY MR. KELLOGG: (Resuming)

8 Q Now if you take a look at what's been marked
9 as Exhibit 5, just look that over and tell me if you've
10 ever seen it before?

11 A I've seen it.

12 Q Can you identify that for me, what it is?

13 A It's clause 7A, rights in data, rights in
14 technical data and computer software, which was in the
15 RFP and is in the resulting contract.

16 Q And to it your testimony that the article 12,
17 at least your recollection is, that the rights in data
18 clause referred to in Mr. Kelly's March 1 letter in the
19 RFP, section 6, article 12, that was to be deleted, your
20 recollection is that's a different clause from this one
21 that became clause 7A in the contract?

22 A Yes.

1 Q And what to your recollection did the article
2 12 -- what in substance did that provide for?

3 A I would like to see it. But what I recall
4 from the negotiations is that problems with the second
5 sentence, the middle sentence of that short provision,
6 which seems to restrict the contractor's ability to
7 independently market PROMIS.

8 And as a part of the total negotiations, the
9 contract was negotiated as a package, it was give and
10 take on various issues, we agreed to take that article
11 out.

12 Q And in testimony earlier that in the contract
13 as it was eventually executed in March of '82, that the
14 government had unlimited data rights to the data
15 supplied to them?

16 A Yes, sir.

17 Q Look here under the definitions in clause
18 74(a)sub8 down at the bottom of the first page there.

19 You see the definition there of limited rights?

20 A I see it.

21 Q If you turn to page 116 down at the bottom,
22 parenthetical 2, captioned, limited rights.

1 A I see it.

2 Q In your understanding, was there any part of
3 these data, the rights of the data, as to which the
4 government had any limited rights?

5 A No, unlimited as to everything.

6 Q What is this referring to here when it says,
7 limited rights?

8 A The clause was written for all situations, to
9 cover multiple situations. I clearly marked out the
10 part of the clause that deals with limited rights, or
11 any kind of restriction.

12 Q Now, when you say you marked it out, turn over
13 to page 117, is that your handwriting there, where it
14 looks to be N slash A, under the caption, limited rights
15 legend?

16 A Yes.

17 Q And then is that your N slash A again
18 underneath there, explanation of limited rights data,
19 identification method used?

20 A Yes, right. Correct.

21 Q And I guess turning over to page 118, up at
22 the top of the page, restricted rights legend. Is that

1 and then parens 2 little i at the bottom of 11b, it
2 speaks there in terms of technical data pertaining to
3 items, components or processes developed at private
4 expense.

5 A You are reading under limited rights.

6 Q Yes, that's what I say. And that doesn't
7 indicate there that it has to be identified anywhere
8 else, does it, when they talk about data provided,
9 developed at private expense?

10 A The section, limited rights, does not apply to
11 this contract. The section, restricted rights, does not
12 apply to this contract.

13 MR. COOPER: I object to the form of your
14 question. Having looked at it, since technical data is
15 defined different than computer software under the
16 contract, and the section that you read with respect to
17 private expense relates to technical data as opposed to
18 computer software.

19 MR. KELLOGG: Off the record.

20 (Discussion off the record.)

21 MR. KELLOGG: Mark this as Exhibit 6.

22 (The document referred to

1 was marked Videnieks Exhibit
2 No. 6 for identification.)

3 BY MR. KELLOGG: (Resuming)

4 Q Mr. Videnieks, I show you what has been marked
5 here as Exhibit 6 for your definition. What appears to
6 be article 12, labelled data rights, is this, in your
7 recollection, the data rights provision that was
8 contained in the original RFP that was agreed to be
9 deleted as reflected in Mr. Kelly's letter to you of
10 March 1 of '82?

11 A Yes.

12 Q And what is there in that language that would
13 have prevented the contractor from selling the materials
14 to a third party?

15 MR. COOPER: Objection, the question calls for
16 a legal conclusion. I don't mind you asking the witness
17 which sections he understood from his conversations
18 Inslaw was concerned about.

19 MR. KELLOGG: I take it, as included in all my
20 questions of this sort to him about his understanding of
21 the contract, I recognize he's a nonlawyer. I was only
22 asking his understanding in light of his earlier

1 testimony.

2 MR. COOPER: I'm just trying to preserve the
3 record, Mr. Kelly. I'm not trying to interrupt your
4 question.

5 THE WITNESS: I don't know which particular --
6 I mean, I would be happy to guess what Inslaw thought.

7 BY MR. KELLOGG: (Resuming)

8 Q Okay, I just want your best recollection.

9 A I think they may have thought, may have had
10 problems with the sentence which begins with, the
11 contractor shall neither retain nor produce for private
12 or commercial use any materials furnished or produced
13 under this contract.

14 To the best of my recollection, that may have
15 been the clause, the sentence, that they had a problem
16 with. And --

17 Q Mr. Hamilton calls my attention to the fact
18 that in the deposition that Mr. Kelly gave in this case
19 he indicated he testified that it was his recollection
20 that in the course of these negotiations involving
21 yourself among others, leading up to the execution of
22 this contract, in March of 1982, that he used the

1 example on this data rights issue, among other things,
2 that Inslaw, for example, wanted the right to be able to
3 market its software to the Pentagon.

4 And that was one of the things they were
5 trying to preserve.

6 Do you recall Mr. Kelly using such an example
7 in any of the meetings that you attended?

8 A I don't recall that, no.

9 Q Would you deny that he used such an example?

10 MR. COOPER: Objection.

11 THE WITNESS: If I don't recall, I don't
12 recall. I can't deny, I don't think.

13 BY MR. KELLOGG: (Resuming)

14 Q Now, I've got before me what appears to be the
15 full RFP. As a device to aid and expedite this, do you
16 have a recollection, as you sit there, Mr. Videnieks, as
17 to where the clause that became clause 74 in the final
18 contract, where within the RFP that would normally be
19 included?

20 A Towards the back.

21 MR. KELLOGG: Let's go off the record.

22 (Discussion off the record.)

1 BY MR. KELLOGG: (Resuming)

2 Q Now, let's move on for a moment.

3 You get the contract signed. In the course of
4 these discussions, I believe you indicated that Inslaw
5 initially, their cost proposal was somewhere, \$15-, 16-,
6 17-, \$18 million, I forget what you testified, but in
7 any event you said it was 5 or 6 or more million above
8 what budgetary requirements that the government had is
9 that correct?

10 A That's correct.

11 Q And ultimately, through the negotiation
12 process, it was reduced, their cost proposal was reduced
13 to the \$10 million roughly that was set forth in the
14 contract, right?

15 A Right.

16 Q And eventually Exhibit 4, I think, shows what
17 the exact numbers were.

18 And in arriving at that reduced number, did
19 the Department undertake to agree to provide some
20 personnel in some of the sites where the software was
21 going to be installed in order to reduce the manpower
22 demand on Inslaw so that its costs could be reduced?

1 A I have difficulty understanding your question,
2 because I don't think we furnished people for
3 performance of the contract.

4 Q Well, my question to you is, do you recall in
5 the discussion, in the course of this process, of Inslaw
6 attempting to bring its costs down and reach an
7 agreeable number, an agreeable price for the contract?

8 Do you recall the government agreeing to
9 provide some on-site personnel to perform some parts of
10 the service that Inslaw had originally intended to
11 perform in order to cut the cost down?

12 A No, what the government -- I remember Inslaw
13 bringing up the point about the availability of systems
14 managers, that they would be there at the -- to meet the
15 implementation schedule, to be there around that time,
16 to be on board.

17 Some had not been hired yet, but that is not
18 -- they were to be government personnel working for the
19 government and not performing the contract effort, or
20 anything envisioned under it.

21 Q I understand. But did the government agree,
22 as part of the negotiation process, agree to provide

1 those systems managers in place at the appropriate time
2 in order to reduce Inslaw's costs?

3 A No, sir. Inslaw expressed concern that the
4 implementation schedule under the contract would be
5 negatively affected by the government not having hired
6 all of the systems managers yet.

7 The government was in the process of hiring
8 people identified as systems managers. And then Inslaw
9 was afraid that this might not happen, and could impact
10 negatively on their contract performance.

11 Q And one way it would impact negatively is that
12 it would drive their costs up; isn't that right?

13 MR. COOPER: Objection. Are you asking the
14 witness, is that what they said, or are you now asking
15 him to speculate?

16 BY MR. KELLOGG: (Resuming)

17 Q I'm asking you, is that in sum and substance
18 what they said and why they were concerned about it?

19 A I imagine Inslaw was probably concerned about
20 costs and fee, because fee was linked to performance
21 also.

22 Q And to the extent that their costs were forced

1 up, it might adversely affect their fee, too, isn't that
2 right?

3 A A fee was also linked to meeting schedule.

4 Q All right. And I take it the department did
5 assure them, in response to these expressions of
6 concern, that it would make sure that these system
7 managers were hired in a timely manner?

8 A I think that is reflected in the contract; if
9 not in the contract itself, then the last -- the latest
10 correspondence preceding the contract award.

11 Q And do you know from your own knowledge, in
12 fact, as the contract went forward, whether the
13 government fulfilled that commitment?

14 A I really don't know for a fact whether there
15 were problems in hiring these people or not, or whether
16 in order for any event to affect contract performance,
17 there has to be a demonstrated -- the effect has to be
18 demonstrated in this procedure that kicks in.

19 Q Was it demonstrated to your understanding?

20 A I don't remember the nonavailability of
21 program managers becoming an issue. I don't
22 specifically remember having to modify the contract, and

1 I don't remember the contractor requesting that the
2 contract be modified for that reason.

3 Q But you do recall that in the negotiation
4 process that led up to the contract that the government
5 did make that assurance that they would get these people
6 on board in a timely fashion?

7 A As I say, I think that provision is reduced to
8 writing.

9 MR. KELLOGG: Let's mark this, and these are
10 two documents together, as Videnieks Exhibit 7. Mark
11 the first one 7, and make the next one behind it 7A

12 (The documents referred to
13 were marked Videnieks
14 Exhibits No. 7 and 7A for
15 identification.)

16 BY MR. KELLOGG: (Resuming)

17 Q Now, Mr. Videnieks, if you just look there at
18 what has been marked as 7 and 7A, and then I have some
19 questions for you.

20 A Yes, I've looked at 7A, but it's a fairly
21 lengthy document. It appears to be Inslaw's internal
22 correspondence, which I am not familiar with.

1 Q Well, my question is, do you recall having
2 seen either Exhibit 7 or 7A before?

3 A I think I've seen -- I've seen them, but I
4 have not been involved in any detailed discussions. I
5 don't even know whether I have read very carefully 7A.

6 MR. COOPER: If I might go off the record for
7 a second?

8 (Witness confers with counsel.)
9 THE WITNESS: I definitely did not see this

10 around the timeframe when it was done, April 1. It's
11 probably in my file, which is three big boxes. But I
12 couldn't very well repeat this. If you asked me to
13 summarize this, I couldn't.

14 I probably glanced at it, and that was it. I
15 don't know when I would have. I don't know when it
16 actually became a part of my file, if it is in that file.

17 BY MR. KELLOGG: (Resuming)

18 Q Just so that the record is clear in a general
19 sense, Exhibit 7 is a cover letter from an attorney
20 Roderick Hills to Stanley Morris, who is an associate
21 deputy attorney general, and it's dated April 2, 1982.
22 And it purports to enclose a memorandum which

1 is marked as 7A, and is dated April 1, 1982, and it is
2 from Mr. Hamilton to a Mr. Rogers, who, for the record,
3 I will indicate is an associate in Mr. Hill's law firm,
4 describing various enhancements to the PROMIS software,
5 and issues relating to that.

6 Now, irrespective of whether you may have ever
7 seen 7A, the Hamilton memorandum, did there come a time
8 when you became aware that this issue and this memo had
9 been submitted to Mr. Morris by representatives of
10 Inslaw?

11 A I think somewhere along the line over the past
12 several years a copy of this attachment worked itself to
13 me and got in my file.

14 Q When, to the best of your recollection, did
15 you first learn that Inslaw, through Mr. Hills, had
16 contacted Mr. Morris about this issue April 2, 1982?

17 A I can't even begin to guess.

18 Q Would it have been within 30 days of that, do
19 you think?

20 A I can't begin to guess within days, months or
21 years. I guess I can, years; it's '82. I don't know
22 when. I was not party to that exchange of documents.

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1 Q I'm trying to find out when, if at all, when
2 you became aware.

3 A It's in my file. I recognize -- it's attached
4 to something else, maybe attached to letters written by
5 Inslaw. But it's definitely an attachment somewhere.

6 MR. KELLOGG: Mark this as Exhibit 8, please.

7 (The document referred to
8 was marked Videnieks Exhibit
9 No. 8 for identification.)

10 BY MR. KELLOGG: (Resuming)

11 Q Mr. Videnieks, if you would just read over
12 what has been marked as Exhibit 8, please?
13 (Pause.)

14 Q Now, Mr. Videnieks, Exhibit 8 appears to be a
15 copy of three pages of handwritten notes that you made;
16 is that correct?

17 A Yes.

18 Q Now, I'm going to have to go through these
19 entry by entry here, and as it will become apparent, I
20 have reason to believe that these dates that you've got
21 on here or appear to have on here refer to 1982,
22 although it does not say that.

1 Now, looking at the first entry there, which
2 starts, 1:00 p.m. 4/14, does that say, meeting in
3 Brick's office?

4 A Yes.

5 Q And then does it have names underneath that
6 that say, Brick, Karen, Jack?

7 A Yes.

8 Q Dick, D.H., that is De capital H?

9 A Yes.

10 Q And PV?

11 A Yes.

12 Q And over at the side, to the right, does that
13 appear to say Morris?

14 A It appears to say Morris slash S.

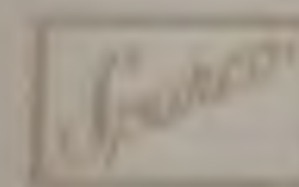
15 Q And then underneath that to the left, does
16 that appear to say Rooney?

17 A I think it says Rose. Maybe it's Rooney,
18 was Mr. Rose --

19 A Or Rosen. It could be Rosen.

20 Q Well, down to the right there, it says AAG
21 policy.

22 A Yes. Which would not have been Rooney. It



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1 would not have been Rooney.

2 Q Would it have been Rose?

3 A I think so. This is a little while ago. This
4 is sometime ago.

5 Q In any event, back to the identification of
6 the people, would this have indicated that you attended
7 a meeting on April 14th at 1:00 p.m.?

8 A Yes.

9 Q And that Brick Brewer was there?

10 A Yes.

11 Q And Karen who?

12 A Krug.

13 Q And I take it Jack Rugh?

14 A Right.

15 Q And Dick DeHahn?

16 A Yes.

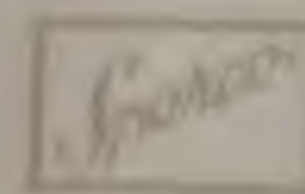
17 Q And PV would be yourself?

18 A Correct.

19 Q Do you recall attending such a meeting, sir?

20 A I can't recall. This is nearly eight years
21 ago. I can't recall the specific meeting. I'm not
22 saying the meeting did not take place. Obviously it

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1 took place because I wrote it down.

2 Q As you sit here today, sir, do you have any
3 present recollection as to what year these notes relate
4 to?

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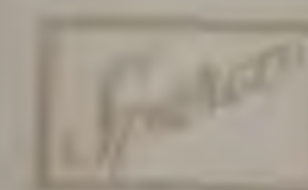
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1 A I guess it was 1982.

2 Q All right, and would these notes indicate that
3 Mr. Morris was present at the meeting?

4 A I never met Mr. Morris, so I don't think he
5 was there.

6 Q All right. Might it indicate that something
7 to do with Mr. Morris was discussed at that meeting?

8 A It might.

9 Q Do you recall ever discussing any meeting with
10 these people, anything to do with the issue raised in
11 Exhibit 7 and 7A on April 2 of '82 with Mr. Morris?

12 A No.

13 Q Now if you will just read that next entry
14 beginning Monday, or Mon. 3:00 p.m. Just read that to
15 me, and I want to ask you what it means, so far as you
16 can recall.

17 A Monday, 3:00 p.m. -- negotiations at LEAA re
18 DJRS contract overruns, call Dave S., Room 1268.

19 Q All right. Now, first I would ask you whether
20 that wouldn't indicate DJRS instead of DJRS?

21 A It could be O. It could be O. It's O. It
22 should be O.

1 Q Do you recall as you sit here today who Dave
2 S. is?

3 A I believe Dave S. was a contracting officer at
4 DJRS.

5 Q Do you have a present recollection that there
6 is a separate contract between DJRS and INSLAW?

7 A Yes.
8 Q Presumably, then, this would reflect a note
9 about a meeting that you had regarding overruns on that
10 contract with DJRS and INSLAW?

11 A Yes.
12 Q Do you have any present recollection of what
13 was discussed at that meeting?

14 A My recollection is that under the DJRS
15 contract, one task concerned EDUSA, and that task was
16 for enhancements and that the contractor had notified
17 DJRS that there may be an overrun or DJRS had assessed
18 performance under the contracts and concluded that there
19 would be an overrun which would affect EDUSA.

20 Q All right. Now, moving down to this next note
21 there marked two, "tomorrow A.M. call Dave S. and set up
22 review of DJ or DJRS contract", is it your recollection

1 that you made this note in a meeting with Dave S.?

2 A No, I can't recall whether I was in a meeting
3 or as a result of a telephone conversation.

4 Q Do you recall yourself reviewing the OJRS
5 contract with Mr. Dave S.?

6 A I don't think it was with Mr. Dave S. but
7 eventually I did review that contract.

8 Q All right. Now on that next line there, "D.C.
9 contracts Task 9, Phase 2", what does that mean?

10 A One of the contracts that INSLAW had concerned
11 the D.C. Court system, and I can't recall now what Task
12 1 and Phase 2 were.

13 Q Would it be fair to conclude that, whatever it
14 was, that this D.C. Court contract was different
15 contract from the OJRS contract?

16 A It may have been, or maybe it was a distinct
17 task after that contract.

18 Q Can you read the name? It looks like a name
19 underneath Task 1, Phase 2?

20 A Bob Whiteley.

21 Q No, no, the first line immediately under Task
22 1, Phase 2. It looks like a Z.

1 A It looks like Zelenski, but I can't recall who
2 Zelenski would have been; and the second one I can't
3 read.

4 Q Move then to the next entry beginning F/U Bob
5 Whiteley.

6 A Right.

7 Q Tell us what that means.

8 A "Followup Bob Whiteley re overhead rates,
9 proposal or progress. Status --".

10 Q Are you sure it doesn't say "stress"?

11 A You're correct. "Stress need for detailed
12 look at overhead pool, people, et cetera."

13 Q Does that jog your recollection as to what
14 that -- why did you make that note?

15 A I don't know why I would have made it in April
16 but I know at one time in that time frame and
17 continuously we were concerned about ability, the
18 contractor's ability to perform the contract within
19 target costs, and there were efforts to control costs or
20 to talk to INSLAW to have them control the costs of
21 performance of this contract.

22 One of the areas in which we concentrated was

1 the overhead area.

2 Q Well, do you recall in this early period Mr.
3 Brewer ever raising the issue with you of whether
4 INSLAW's overhead costs might be out of line?

5 A I don't recall that. I think I was, I and the
6 audit staff people, were the ones concerned with
7 overhead more than Brewer would have been.

8 Q Well, would this be a note that you made to
9 yourself to call or speak to Bob Whiteley in the future?

10 A It means a followup. It means a followup to a
11 prior attempt at communication or a prior conversation.

12 Q But would it reflect that you actually talked
13 to him and this was said, or this was a note to yourself
14 that you should followup and say these things to him?

15 A It may be a note to myself.

16 Q Move to the next one, again outlined in an
17 outline and again marked 4/14.

18 What does that indicate to you?

19 A "Called Dave S., telephone number. He will
20 talk to Stan (the chief)" and then "-- going to INS
21 Friday re 1 and 2 above. He will call back, call me
22 back."

1 Q All right. Now, I take it when you say call
2 Dave S., that's the same Dave S. at OJRS that you
3 referred to up above earlier?

4 A Correct.

5 Q He apparently told you that he will talk to
6 Stan?

7 A Who was his boss.

8 Q He was going to talk to him about the points
9 that you had up above there, number 1 and number 2,
10 namely the overrun on the OJRS contract and the need to
11 review the OJRS contract?

12 A Right.

13 Q Now, do you recall who Stan is, what his last
14 name is?

15 A I believe his last name is Stirman,
16 S-t-i-r-m-a-n.

17 Q He was being transferred to the immigration
18 service?

19 A Yes. I believe he is currently a contracting
20 officer at the INS. He may have been at OJRS and
21 transferred from there to INS.

22 Q Now, down to the next entry there marked E.

1 Could you read what that says, please?

2 A "Discussed INSLAW's PROMIS 2 memo. DeHahn
3 said that the Civil Division will probably get the
4 action. Termination for convenience discussed. I
5 advised against it. DJRS discussed. See 1 and 2 above."

6 Q Again, can we assume it is DJRS?

7 A Yes. I don't know why I kept saying D, but it
8 is D.

9 Q All right. Now, what is your recollection
10 that that is all about?

11 A I don't know which PROMIS 2 memo we're talking
12 about. It could very well be the one that was shown
13 earlier as one of the exhibits here, but, like I say, I
14 don't recall it.

15 Q You say could very well be the one. I take it
16 you're referring to the one marked 7A?

17 A It could be. It could be. It appears to be
18 entitled that.

19 MR. COOPER: It's not entitled.

20 THE WITNESS: Well, it's some memorandum.

21 BY MR. KELLOGG: (Resuming)

22 Q 7A is entitled PROMIS '82, and your notes says

1 "PROMIS 2".

2 A There may be a different memorandum, then, but
3 apparently it could have been a memorandum of that
4 nature and I don't specifically recall it.

5 Q Well, now, when you say here in your note
6 discussed INSLAW's PROMIS 2 memo, with whom? Obviously,
7 I take it you discussed it with DeHahn?

8 A Right.

9 Q Do you recall such a meeting discussing this?

10 A Not specifically, no, and I cannot recall who
11 else would have been there.

12 Q Do you think anyone other than DeHahn would
13 have been present at such a discussion?

14 A Normally I would not meet with DeHahn by
15 myself.

16 Q All right. Now, where did DeHahn work? What
17 was his role?

18 A I believe he was an attorney but in a
19 nonattorney slot with Justice Management Division at
20 that time.

21 Q So he work, so far as you recall, at EOUSA?

22 A Eventually he worked at EOUSA. I don't think

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1 he worked with EOUSA at that time.

2 Q When your note indicates that DeHahn said that
3 Civil Division will probably get the action, what do you
4 think that meant?

5 A I think it probably meant they would receive
6 the PROMIS 2 memorandum for review.

7 Q Don't you think it probably means that they
8 would receive whatever action that Mr. Morris might
9 request in response to the PROMIS 2 memo?

10 A No.

11 Q Is it your testimony that your belief is that
12 this had nothing to do with the request of Mr. Morris
13 that is reflected in Exhibit 7 and 7A?

14 A It's my testimony that the PROMIS 2 memo as in
15 front of DeHahn at that date was to be referred to the
16 Civil Division for action. Apparently it contained some
17 legal issues which would normally be handled by the
18 Civil Division.

Well, I'm really asking you a question. I
told you it is a fact and Mr. Morris has
admitted that in response to receipt of this letter,
Exhibit 7, and the memo, 7A, he did make inquiry of the

1 Civil Division for preparation of their response and
2 certain research involved.

3 Now, does that refresh your recollection any
4 as to whether or not this meeting that you have a note
5 here of could have been referring to that inquiry by Mr.
6 Morris?

7 A I don't know anything about Morris. I was not
8 in his deposition. I don't know what he said to who or
9 why.

10 Q I understand you are not Mr. Morris, but your
11 testimony is you have no recollection that this note was
12 made in response to a discussion of what was anticipated
13 then to be a request from Mr. Morris?

14 A No, I did not function at those levels. I was
15 administering the contract at a working level basically,
16 and these are very high government officials.

17 Q Now the next phrase here, "termination for
18 convenience discussed", now what contract do you think
19 you were discussing terminating for convenience?

20 A I don't recall. Obviously at this point I
21 don't think it was the PROMIS contract.

22 Q Well, this contract was informally referred to

1 as the PROMIS 2 contract, wasn't it?

2 A No, sir.

3 Q Was there another contract referred to as a
4 PROMIS 2 contract?

5 A No, sir.

6 Q So as far as you are concerned, there was
7 never any contract that you know of referred to as the
8 PROMIS 2 contract?

9 A Yes, sir.

10 Q All right. As you sit there today, do you
11 have any recollection whatsoever what contract it was
12 that you were discussing terminating for convenience?

13 A I don't specifically recall. I would -- since
14 this was '82, it was a month or so into the life of this
15 contract, that we were no talking about terminating the
16 PROMIS contract.

17 MR. COOPER: Could you tell him which one you
18 think it might relate to?

19 THE WITNESS: It may be the DJRS contract. In
20 other words, if there was a serious overrun over there,
21 that would be one of the courses of action.

22 BY MR. KELLOGG: (Resuming)

1 Q Now, but this note here would seem to be tied
2 together, wouldn't it, with the statement "discussed
3 INSLAW's PROMIS 2 memo"?

4 MR. COOPER: Objection.

5 BY MR. KELLOGG: (Resuming)

6 Q You tell me that's not a fair inference?

7 MR. COOPER: You're not talking inference.
8 You're talking facts, and the witness just gave you his
9 best recollection of what the statement relates to.

10 BY MR. KELLOGG: (Resuming)

11 Q I'm trying to get your best recollection as
12 refreshed as I can.

13 You've testified that the first line there
14 says "discussed INSLAW's PROMIS 2 memo", and then it
15 says, the next line, "DeHahn says that Civil Division
16 will probably get the action".

17 I take it that that second line presumably
18 refers to action on the PROMIS 2 memo; right?

19 A I think that's what DeHahn meant.

20 Q Then my question is is it your testimony that
21 termination for convenience discussed that that does not
22 relate to anything to do with the PROMIS 2 memo?

Spence

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1 again your handwriting, N slash A?

2 A Yes.

3 Q So it's your testimony, is it, that by putting
4 those three markings in there, NA for not applicable,
5 you intended to delete the application of this entire
6 limited rights section, beginning on page 116, paragraph
7 parens 2?

8 A s and Inslaw agreed that we have unlimited
9 rights to all items delivered under this contract. And
10 Inslaw agreed to delete the applicability of any sort of
11 limitations or restrictions.

12 And it was my intent to do so, and did that by
13 marking out -- by putting these NAs on the clause.

14 MR. KELLOGG: I guess this is a good time to
15 break for lunch.

16 (Whereupon, at 12:55, a luncheon recess was
17 taken.)

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1
2 AFTERNOON SESSION

3 (2:00 p.m.)

4 Whereupon,

5 PETER VIDENIEKS

6 resumed the witness stand and, having been previously
7 duly sworn by the Notary Public, was examined and
8 testified further as follows:

9 EXAMINATION (RESUMED)

10 BY MR. KELLOGG:

11 Q Mr. Videnieks, you are still under oath. We
12 are back on the record after lunch.

13 Now you have testified here that Mr. Merrill
14 in a January 14, 1982 letter to you, that was marked as
15 Exhibit 3, in response to the questions that you had
16 sent him, that he made the assertion that Inslaw, the
17 software Inslaw was going to provide had some privately
18 funded enhancements in it.

19 I guess my question is -- strike that.

20 And you've testified also that the contract as
21 ultimately executed March 16, 1982, gave to the
22 government unlimited data rights as a result of this
clause 74 that was marked as Exhibit 5, correct?

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1 A Correct.

2 Q And I guess my question to you is, from the
3 time that Inslaw responded on January 14 of '82 that
4 there were privately funded enhancements in its
5 software, until the execution of the contract, March 15,
6 1982, in which you say there were these unlimited data
7 rights agreed to, who did you deal with from Inslaw in
8 these negotiations?

9 A Dean Merrill, Jim Kelly, John Gizzarelli. I
10 don't recall Bill Hamilton being there. That's about it.

11 Q So to the best of your recollection, at any
12 rate at this time, it was these three people, Dean
13 Merrill, Jim Kelly and John Gizzarelli?

14 A I'm trying to think who else may have been
15 there. I don't recall whether Murray Hannon was there
16 or not.

17 Q All right. Now, to the best of your
18 recollection, how many meetings did you have or did you
19 attend with any of these people from Inslaw between
20 January 14, 1982 and March 15 or 16, when the contract
21 was executed?

22 A There were numerous telephone conversations,

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1 primarily with Kelly. I don't recall the number of
2 meetings, but it was a fluid process of give and take
3 during those two months.

4 Q All right, so would it be fair to infer from
5 that that your primary contact from Inslaw was Jim Kelly
6 during this negotiation period?

7 A Mine, yes.

8 Q You say there were a number of meetings. Can
9 you give me an idea of roughly how many? Are we talking
10 about more than a dozen?

11 A Including telephone conversations also?

12 Q Just meetings, face-to-face meetings is my
13 question right now.

14 A I can't recall; I really can't. There were
15 more telephone calls, obviously, maybe on a daily basis,
16 or even more than daily basis at times.

17 And if one would -- I don't know whether the
18 -- I think when Inslaw submitted the initial proposal,
19 we met for the first time at Inslaw, basically asking
20 them to rethink it and resubmit it.

21 I don't know whether that was within the time
22 period that you mentioned or not. And the meetings

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1 lasted through right to the date of award of the
2 contract.

3 Kelly would come to my office individually.
4 Also there were meetings where groups of people were.
5 But I can't begin to guess.

6 Q However meetings there were, how many times do
7 you recall discussing with Mr. Kelly, either face to
8 face or on the telephone, and again, I'm focusing now
9 just in this period between January 14, 1982 and March
10 16, '82, when the contract was signed, how many times do
11 you recall discussing with Mr. Kelly anything to do with
12 data rights?

13 A I remember discussing all issues, all terms
14 and conditions of the contract, as they came up for
15 negotiations during that time period.

16 I don't recall specifically when during that
17 time period I would be limiting the discussion to data
18 rights, or even including the data rights issue in a
19 general situation, except I can say that during that
20 two-month period, or even a broader period, those
21 negotiations took place.

22 Q Well, when I take it, as you sit here today, I

1 mean you have a clear recollection that as of the time
2 you signed the contract, there was an agreement that the
3 government would obtain unlimited data rights to the
4 software that was provided, or to be provided, by Inslaw
5 under the contract; isn't that right?

6 A Very clear.

7 Q My question is, how many times do you recall
8 ever discussing that subject prior to the execution of
9 the contract with Jim Kelly?

10 A I can't recall a number.

11 Q Would it be as many as a half a dozen, do you
12 think?

13 A I don't want to guess, sir.

14 Q I take it it would be less than a hundred,
15 wouldn't it?

16 MR. COOPER: Objection, the question calls for
17 speculation, and the witness has stated he can't recall
18 precisely how many meetings.

19 MR. KELLOGG: Objection is noted.

20 You know I have the right to test his
21 recollection.

22 MR. COOPER: What validity does it have if you

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1 ask him to guess. He's under no obligation to try to
2 guess for you.

3 MR. KELLOGG: I'm trying to test his
4 recollection. And you know as you sit there that I'm
5 entitled to do that.

6 MR. COOPER: Well, ask him if he recalls.
7 Don't ask him to guess, if you would.

8 MR. KELLOGG: I'm not asking him to guess.

9 BY MR. KELLOGG: (Resuming)

10 Q I take it that you do recall that you did not
11 have in excess of a hundred discussions with Kelly about
12 this data rights issue during this period of times,
13 isn't that right, sir?

14 A I don't think I had a 100 discussions with
15 Kelly on that issue.

16 Q Do you think you might have had as many as 50?

17 A I don't know.

18 Q You could have?

19 A I could have. It could have been mentioned
20 off and on. We dealt on an almost daily basis over a
21 period of two months, about six years ago, sir.

22 Q Do you recall any specific conversation --

1 A Also, I could have talked with Dean Merrill,
2 or anybody for that matter. I would be purely guessing
3 to try to put any kind of estimate on that.

4 Q Let me ask my questions.

5 Do you recall any specific conversation either
6 with Kelly or Merrill or anybody else on behalf of
7 Inslaw, in which they agreed to concede this point, that
8 is, the unlimited data rights to the government that you
9 say you have a clear recollection was agreed to?L

10 A At one point or another, I went through the
11 contract, the finalized form of the contract, and
12 discussed with Inslaw personnel, probably Kelly, point
13 by point, every condition in that contract.

14 So there was a clear meeting of the minds that
15 every term was understood. And only after that did both
16 sides put the contract through their respective channels
17 and sent it on.

18 Q All right. So my question is, do you have a
19 specific recollection of discussing and coming to
20 agreement with Kelly about the unlimited data rights
21 issue? Just that issue?

22 A Yes, as a part of agreeing on the total

1 contract.

2 Q And do you remember what Kelly said?

3 A Well, yes, I think the whole issue, the data
4 rights issue, reached -- became a prominent point in
5 negotiations fairly close towards -- In the days
6 preceding the final execution of the contract. And it
7 was a group processe.

8 There was actually a point on the negotiation
9 table, similar to where we sit here, and the data rights
10 issue was discussed by numerous personnel in detail, and
11 as a result of that, we moved that language from the
12 RFP, and there was a clear understanding that we had
13 unlimited rights.

14 Q And your recollection is that people on behalf
15 of Inslaw expressed some concern about something to do
16 with the data rights issue?

17 A Marketability. They were concerned about the
18 government prohibiting, which I think is what the RFP
19 language will read when we get it, prohibiting Inslaw to
20 market PROMIS independently to other sources.

21 Q To other customers?

22 A Yes.

1 Q All right, and it was your understanding that
2 the modification that you agreed to would have resulted
3 in Inslaw's retaining the right to market it to
4 third-party customers?

5 A And us having unlimited rights.

6 Q Now, turn if you will to Exhibit 5, the copy
7 of clause 74 as it was contained in the contract.

8 Now I'm going to try to understand precisely,
9 or as precisely as I can, what it is that your
10 understanding was.

11 What was it you understood the contract gave
12 unlimited rights to the government in?

13 A Shall I read?

14 Q Well, I'm asking for your recollection. I can
15 read the contract. I'm just asking for your --

16 A That is my recollection, what is written there.

17 Q Written where?

18 A The clause on -- government's rights,
19 unlimited rights, page 115, clause 74.

20 Q Clause 74?

21 A 74.

22 Q But you're talking about specifically it would

1 subparagraph parens little b, government's rights?
2 A Right.

3 Q Number one, unlimited rights?
4 A Yes.

5 Q Is it your understanding that that clause
6 there gave the government unlimited rights in technical
7 data -- strike that -- in software that Inslaw may have
8 developed with private source funding?

9 A Computer software required to be originated or
10 developed under a government contract, or generated as a
11 necessary part of performing the contract.

12 If it's a necessary part of the performing
13 contract, and it's unlimited under the contract, then
14 unlimited rights.

15 Q Do you contend, or is it your understanding,
16 that if there were any privately funded enhancements
17 that Inslaw had made to the software, is it your
18 understanding that the contract required for its
19 performance that Inslaw provide the government with
20 those private funded enhancements?

21 A We did not request -- we learned for the first
22 time about these privately funded enhancements, or it

1 became an issue, sometime after the contract award.

2 Q Well, you say that you learned for the first
3 time, but as I have pointed out, and I thought that you
4 had acknowledged, back here in Mr. Merrill's letter to
5 you, dated January 14, 1982, which is marked as Exhibit
6 3, at page 9, Mr. Merrill indicated there that in
7 response to the question, what proprietary rights are
8 you talking about, he responded by saying that there was
9 some privately funded enhancements.

10 A There was one point in a two-month period,
11 lengthy negotiations, that at that time Inslaw took that
12 position.

13 When the contract was executed, it was our
14 agreement that whatever is delivered under the contract,
15 we would have unlimited rights to under the contract.

16 Q Well, Mr. Videnieks --

17 A You don't have everything there. You are
18 presenting selective information.

19 Q Well, I take it what has been marked here as
20 Exhibit 5, I mean, this is the entire data rights clause
21 as it was contained in the contract, the actually
22 executed contract, isn't it?

1 A Yes.

2 Q All right, and do you maintain, or is it your
3 understanding, that somewhere in other parts of the
4 contract that there is an actual requirement on Inslaw
5 that it deliver software containing its privately funded
6 enhancements in order to comply with its duties under
7 the contract?

8 A Section C of the contract is the work
9 statement. It tells the contractor and the government
10 what shall be done under the contract, the general
11 provisions of the contract of which clause 74 is a part
12 of, apply to the work statement of the contract.

13 Q That isn't an answer to my question, I don't
14 think.

15 What is your understanding as to whether the
16 contract as executed required Inslaw to deliver software
17 including its privately funded enhancements in order to
18 comply with the contract?

19 A Inslaw, under the contract, was required to
20 install, maintain and provide training services for
21 PROMIS. The requirement was expressed in Section C of
22 the contract.

1 Some other nonperformance oriented provisions,
2 like the general provisions or what we call boilerplate,
3 apply to the deliverable items identified in section C
4 of the contract.

5 Q Are you saying you don't recall?

6 A I said what I said.

7 Q Obviously, Mr. Videnieks.

8 A Do you agree what I said was correct?

9 Q I agree that the contract says what it says.
10 Yes, I don't dispute that the contract governs.

11 My question is, I'm asking for your
12 recollection of what took place, and your understanding.

13 A My recollection is that all terms and
14 conditions of the contract were, over a two-month
15 period, discussed in detail with the contractor; and
16 that the finally executed document represents the
17 complete meeting of the minds, and sets forth the rights
18 of the parties.

19 Q Now, with respect to the unlimited rights in
20 the software provided, is it your understanding that the
21 government, having acquired these unlimited rights, the
22 government would be entitled, under the terms of this

1 agreement, to disseminate the software to other offices
2 within the Department of Justice apart from those in the
3 United States Attorneys' offices specified in the
4 contract elsewhere?

5 A Where are unlimited rights defined?

6 Q Number seven on the first page, 114.

7 A Seven. Unlimited rights means the right to
8 use, duplicate, or disclose technical data for computer
9 software in whole or in part in any manner and for any
10 purpose whatsoever, and to have or permit others to do
11 so.

12 Q So that would mean that to the extent that the
13 government acquired unlimited rights under this clause
14 74, they would be entitled to copy that software and
15 distribute it anywhere to other offices in the
16 Department of Justice, if they saw fit?

17 A Or to other government contractors.

18 Q Just answer my question first. They could
19 distribute it anywhere within the Department of Justice
20 they wanted to?

21 A Yes.

22 Q And if they wanted to, they could distribute

1 it to any other government agency that they wanted to,
2 the Department of Defense?

3 A Yes, sir.

4 Q Customs?

5 A Yes.

6 Q Treasury?

7 A Yes.

8 Q They could distribute it if they wanted to
9 free of charge to the United States court system, could
10 they not?

11 A Yes.

12 Q And as a matter of fact, they could distribute
13 it to state and local governments, if they wanted to?

14 A Yes, sir.

15 Q And they could grant to those parties the
16 right for them to make copies themselves?

17 A I don't know about that.

18 Q I think it says that, and to have or permit
19 others to do so.

20 MR. COOPER: Objection, the question calls for
21 a legal conclusion. The witness has said he doesn't
22 know.

1 MR. KELLOGG: All right.

2 BY MR. KELLOGG: (Resuming)

3 Q And as a matter of fact, under these unlimited
4 rights, the government would have the right to take the
5 software and give it to IBM; isn't that right?

6 MR. COOPER: Objection.

7 THE WITNESS: What am I supposed to do with an
8 objection?

9 MR. COOPER: Objection, the question calls for
10 a legal conclusion.

11 MR. KELLOGG: I'm just asking for his
12 understanding.

13 THE WITNESS: It's very broad language, yes.

14 BY MR. KELLOGG: (Resuming)

15 Q The answer is yes, they would be able to give
16 it to IBM, any other competitor, whatever you wanted?

17 A Yes.

18 Q And I gather that the answer that you'd give
19 that all of this could be done by the government under
20 this unlimited rights clause, that could be done no
21 matter how much private funding might have been involved
22 by the contractor in developing a particular privately

1 funded enhancement; isn't that right?

2 MR. COOPER: Objection; the question calls for
3 a legal conclusion.

4 MR. KELLOGG: I'm asking for his understanding.

5 MR. COOPER: You're asking for a legal
6 conclusion.

7 MR. KELLOGG: I'm asking for his understanding
8 as the contracting officer under this contract.

9 MR. COOPER: It calls for a legal conclusion.

10 BY MR. KELLOGG: (Resuming)

11 Q You can answer.

12 A To the items with respect to which we have
13 unlimited rights.

14 Q The unlimited rights would be completely
15 unaffected by the amount of money that might have been
16 spent by the contractor in developing privately funded
17 enhancements; that's my question.

18 MR. COOPER: You're talking about this
19 contract, the software furnished under this contract; is
20 that correct?

21 MR. KELLOGG: That's correct.

22 THE WITNESS: All items delivered under this

1 contract were delivered to us with unlimited rights.
2 BY MR. KELLOGG: (Resuming)

3 Q And you would have those unlimited rights,
4 regardless of whether Inslaw has spent \$10 in developing
5 privately funded enhancements contained in it, or
6 whether they had spent a billion dollars; isn't that
7 right?

8 A If Inslaw chose to deliver those items, and
9 agreed to the contract as written and delivered those
10 under the contract as written, yes.

11 Q Let me ask one last point on this clause 74 as
12 it was executed, Exhibit 5.

13 Now, do I understand you correctly, Mr.
14 Videnieks, that your understanding and what you believe
15 the parties intended, was that this entire section that
16 would begin on page 116, towards the bottom, with the
17 parens 2, limited rights, an entire section extending
18 all the way over to I guess it would be --

19 MR. COOPER: If you want to pick up the
20 restricted rights portion, I think it's over to 118.

21 BY MR. KELLOGG: (Resuming)

22 Q I guess my question is, your testimony is that

1 the parties intended, in your view, to exclude
2 everything in this subparagraph parens 2, marked limited
3 rights, starting at the bottom of page 116, and
4 extending down to I guess the bottom of -- extending
5 down to just before parens 3, marked restricted rights,
6 on page 117; is that right?

7 A As being nonapplicable, yes.

8 Q Now, how about the subparagraph 3 there,
9 restricted rights? Did the government have any
10 restricted rights?

11 A Also, it's nonapplicable.

12 Q So that again, that would be the deletion if
13 you will will continue right on page 117, all of page
14 118, all of page 119 --

15 MR. COOPER: I know you're not trying to be
16 unfair to the witness, but I think in the middle of page
17 118 you have a subsection C there which is a different
18 provision.

19 MR. KELLOGG: All right.

20 MR. COOPER: I think it would be subparagraph
21 3 and 4.

22 BY MR. KELLOGG: (Resuming)

1 Q So that it continues on page 118, I guess I
2 see there where it starts. Paragraph 4, parens 4, no
3 legend shall be marked on -- you didn't intend to delete
4 that, I take it?

5 A I think you should probably be looking for C.
6 It's deleted up to C.

7 Q So starting where it says, material covered by
8 copyright?

9 A Yes.

10 Q That was not deleted?

11 A Right.

12 Q Is there any particular reason, sir, that you
13 just marked N slash A in the blanks relating to limited
14 rights legend and restricted rights legend, as opposed
15 to either marking not applicable to the other paragraphs
16 of the clause or striking them out with a line or
17 something?

18 A No particular reason, except that I think that
19 if one were to limit rights and restrict rights, the
20 data would have to be identified, and that would be the
21 place where it would be identified.

22 Q Except that if you look at subparagraph two,

1 A Can't terminate a memo, sir.

2 Q I understand that.

3 MR. COOPER: Counsel, object to the question
4 because it is misleading, and you haven't established
5 any foundation that the PROMIS '82 memo, which has been
6 denominated Exhibit 7A, relates in any way to the
7 Executive Office PROMIS implementation contract, and you
8 are suggesting that it does in your question to the
9 witness. I don't think you have laid a foundation for
10 that point.

11 BY MR. KELLOGG: (Resuming)

12 Q Did you ever recall hearing the DJRS contract
13 with INSLAW referred to as the PROMIS contract?

14 A I don't think I did.

15 Q From what you know about it, do you think it
16 would have been referred to as the PROMIS contract?

17 A I'm familiar with the one task under that
18 contract to the extent that I did review the language in
19 the contract pertaining to that task, and that dealt
20 with PROMIS enhancements.

21 Q All right. Now, your note indicates here that
22 as regards termination for convenience being discussed

1 that you advised against it; correct?

2 A That's what the note indicates.

3 Q Do you think that you would have been -- or,
4 first of all, do you recall your advice being solicited
5 regarding whether to terminate for convenience the DJRS
6 contract?

7 A I don't recall specifically, but it could have
8 been. This note may refer to the termination of that
9 contract or that the termination of that contract was
10 discussed.

11 Q All right. Now, out at the left of your note
12 you marked up there by "discussed INSLAW's PROMIS 2
13 memo", you marked with a circle and a letter A, and then
14 down there farther down you have a letter B.

15 Now, what does that B refer to as you look at
16 it now?

17 MR. COOPER: I think what you're getting at,
18 just so the witness isn't misled, what line of his notes
19 does the B refer to?

20 MR. KELLOGG: Yes.

21 MR. COOPER: What would be the first line that
22 relates to the letter B?

1 THE WITNESS: The first line could be the
2 parenthetical expression, or it could as well be DJRS
3 contract discussed. I can't, at this point I can't
4 tell. The B appears to be more below the line than
5 above the line.

6 BY MR. KELLOGG: (Resuming)

7 Q Well, in any event, after the line that has
8 the phrase "I advised against it", it does say, "DJRS
9 contract discussed, see 1 and 2 above." Is that what
10 that says?

11 A Right.

12 Q It's your testimony that as best as you can
13 recall you still think the termination for convenience
14 being discussed and referred to above that would have
15 related to the DJRS contract?

16 A Which line are you referring to?

17 Your question is which contract, in my
18 opinion, in my recollection, that termination for
19 convenience discussed, that phrase applies to?

20 Q Yes.

21 A I can't specifically recall, but I think it
22 probably concerns the DJRS contract.

1 Q Even though you've got the note about the DJRS
2 contract being discussed after you've stated termination
3 for convenience discussed?

4 A Yes.

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1 Q Now the parenthetical phrase you referred to,
2 quote, apparently, Hamilton agreed to put a lid on EDUSA
3 task and define a deliverable; however, now they're
4 trying to back out.

5 A Yes.

6 Q I take it that refers to the OJRS contract?
7 A I think so.

8 Q Turning to the second page of your notes, what
9 does the next entry there marked C, what does that say?

10 A DC contract discussed, phase two proposal
11 under technical evaluation EDUSA not clear whether they
12 will proceed.

13 I told them about Kelly's call that delay
14 slash noncontinuation will affect overhead rates. Jack
15 Rugh and Brick will meet with DC people Thursday to
16 decide what to do.

17 Possible alternative, task one of phase two
18 only.

19 I think we are talking about three contracts.
20 The DC contract must have been a separate contract.

21 Q All right, and again, would it be apparent
22 that this discussion that you've recorded here in these

1 notes would have at least included Mr. DeHahn and
2 perhaps others that you don't know who; is that right?
3 A I can't say as to whether DeHahn was still
4 present or not.

5 Q But would you think, in light of the reference
6 there to JR and Brick in this note C, do you think it's
7 likely that they were present at this part of the
8 meeting?

9 MR. COOPER: Objection, counsellor, you
10 haven't established a foundation that this was a meeting
11 as opposed to telephone calls or as opposed to Mr.
12 Videnieks' notes of several telephone calls and/or
13 meetings.

14 I don't think there has been any testimony
15 that that is clearly established.

16 BY MR. KELLOGG: (Resuming)

17 Q You have a note at the beginning of the whole
18 thing that says, DC contract discussed. And it's marked
19 C.

20 It sure looks like it would be a continuation
21 of a discussion that was begun at point A; wouldn't that
22 be fair, Mr. Videnieks, you tell me?

1 neat. So this could have been a summarization of events.

2 Q And you don't know, as you sit here, you just
3 can't recall whether this reflected a meeting that you
4 attended, or a telephone conversation, or some summary
5 of events?

6 A I don't like -- on most issues under this
7 contract, there was a series of telephone calls and
8 meetings surrounding issues as they arose, and that was
9 the case here.

10 Q All right. Move down to entry D. Does that
11 say, pilot contract discussed?

12 A Yes.

13 Q And would it appear that this is yet another
14 contract?

15 A It's another contract.

16 Q So if you include the PROMIS implementation
17 contract one that is the focal point of the lawsuit,
18 that may not have been discussed but that's one
19 contract.

20 Second, you've got the DJRS contract.

21 A Right.

22 Q Third, you've got what is referred to here as

1 a DC contract?

2 A Right.

3 Q And fourth, you have something referred to as
4 a pilot contract?

5 A Right.

6 Q So that overall, that's possibly a total of
7 four different contracts, correct?

8 A Correct.

9 Q Now, read me that note on the pilot contract.
10 What does it say after that?

11 A Pilot contract discussed. Not clear as to
12 what has been delivered. JR, Jack Rugh, and CS; I don't
13 know who CS would have been right offhand, will
14 determine completion status March 14.

15 Now, these notes must be after -- they're
16 either assembled incorrectly here, or I wrote them
17 incorrectly. But they're not chronological, it would
18 appear.

19 Q Well, but I guess, I don't know, but one
20 possibility might be that Rugh and whoever CS is were
21 going to determine what the completion status had been
22 on 314.

1 A That could have been.

2 Q Go ahead with the parentheses.

3 A I said to JR that cure notice could be issued
4 with partial termination and reduction of fee for
5 noncompleted items.

6 Q As you sit here, do you have any present
7 recollection of discussion this pilot contract?

8 A Not specific recollection. I do remember that
9 we discussed the pilot contract, because it was, at that
10 time, still in an open mode, and had not been closed out.

11 Q But you were not involved as a contracting
12 officer on any of these other contracts, except the
13 PROMIS Implementation contract, were you?

14 A I was involved in discussions.

15 Q I know, but you were not the contracting
16 officer?

17 A I don't think I -- I was not the primary
18 contracting officer. I may have assisted with some
19 contract modifications, but I don't fully recall that.

20 Q All right, move to the next entry there. It's
21 marked 4 slash 16. What does that say?

22 A Telephone conversation, Jack Rugh, meeting

1 today with Rooney, DeHahn and Brick. They'll discuss
2 proprietary PROMIS II letter.

3 Q Do you have any recollection of that telephone
4 conversation with Mr. Rugh?

5 A NO.

6 Q Do you think it's likely that he was telling
7 you there would be a meeting that day between Mr.
8 Rooney, Mr. DeHahn and Mr. Brewer to discuss the
9 proprietary issues raised in Mr. Hamilton's memo, the
10 PROMIS memo that is marked as 7A?

11 A Or some other letter, but that topic.

12 Q Move to the next entry, 4/19. What does that
13 say?

14 A Called DS.

15 Q Excuse me for interrupting. But just so I
16 understand, would this DS be the same person probably as
17 the Dave S that you have referred to in the first page?

18 A Could have been.

19 Q Over at OJRS?

20 A Could have been.

21 Q Go ahead.

22 A Knows nothing about negotiations. The

1 contracting officer who handled Inslaw contract is gone
2 for three weeks. D knows nothing about DJRS counsel
3 holding negotiations.

4 It looks like, AS --

5 Q I think it says, as far as he knows.

6 A Oh, as far as he knows, there are no
7 negotiations. I can get copy of contract. I said I'll
8 pick it up today.

9 Q All right. You think this referred to a
10 conversation with this Dave S at DJRS regarding the
11 Inslaw-DJRS contract?

12 A I think so.

13 Q And regarding any possible negotiations on
14 that contract?

15 A That apparently someone was conducting.

16 Q Turn over to the next page, please. Up there
17 at the top where it is marked, 4/19, what does that say?

18 A Tele con with Jack Rugh. There will be
19 negotiations, contract number LEAA 006-79, EDUSA task,
20 software enhancements.

21 Q Before you go any farther, you got that where
22 you say, there will be negotiations, you have the words,

1 will be, underlined.

2 Would that be a reference back to the
3 preceding entry on the prior page on the same date,
4 4/19, when this OS tells you that he doesn't know
5 whether there are any negotiations at all?

6 A I think it probably does.

7 Q So now Rugh is telling you that there will be
8 negotiations, and presumably, he's talking about the
9 same matter, the DJRS-Inslaw contract?

10 A This is for the first time that the contract
11 number appears. If indeed this is the number of the
12 DJRS contract, then that I guess would be the case.

13 Q Now move down there where it says -- does that
14 say, Don Manson?

15 A Correct.

16 Q DM, who is Don Manson?

17 A He was the program manager at DJRS on some
18 contracts, and also on the DJRS contract.

19 Q All right. Now, what's the next entry say?

20 A Monday, April 19, 1:30: DJRS library,
21 preparations. 3:00 o'clock negotiations. Negotiations
22 to be held by DJRS' counsel.

1 Q Now, do you think this is a continuation of
2 your note of a telephone conversation with JR, Mr. Rugh?

3 A It could be.

4 Q And would it be him telling you that there
5 would be meetings on these dates, that is to say, the
6 same date, 4/19, kind of a preparatory meetings in the
7 DJRS library at 1:30, and then negotiations at 3:00
8 o'clock?

9 A Normally, I would set those dates. The note
10 appears to have no delineation. There is a gap here.

11 It could be two different annotations.

12 Q Well, I noticed your next note there at the
13 bottom, at the bottom of that entry, indicates,
14 negotiations to be held by DJRS' counsel.

15 A Okay.

16 Q Wouldn't he be the one who would set the date?

17 A He would be, if he would chair the
18 negotiations, then he would set it.

19 Q And it might be that this was all being
20 transmitted to you by Mr. Rugh, isn't it.

21 A It could very well be.

22 Q Now, what's the next entry after that?

1 A Meeting with DS at Dee's office. He could not
2 locate file. Finally located at counsel's office by
3 phone. Gorman, question mark. IA -- I don't know what
4 that means, copy not available either.

5 I decided not to preempt 419 meeting by going
6 up to counsel's office.

7 Q Now what's the date of this entry here?
8 A April 17.

9 Q So this appears to have been made before the
10 entry at the top of the page which is marked 4/19?

11 A I can't explain that.

12 MR. COOPER: How have you concluded, counsel,
13 that the entry at the top says 4/19 as opposed to 4/17?

14 MR. KELLOGG: Maybe I'm wrong. I thought he
15 testified it was 4/19.

16 MR. COOPER: I think he would have testified
17 as to anything you told him as to dates. It's hard to
18 read it.

19 THE WITNESS: These pages apparently are not
20 assembled correctly, because we keep jumping here from
21 16 to 19 to 17. So they are not in sequence.

22 BY MR. KELLOGG: (Resuming)

1 Q Well, in any event --

2 A It's definitely not a chronological chain of
3 events here.

4 Q Do you recall meeting with this Dave S over at
5 DJRS, and trying to find the contract file?

6 A I don't -- I know I had telephone
7 conversations with them, DS. I don't recall meeting
8 with him personally; I may have. I don't recall what he
9 looks like.

10 Q Your last entry there, does that say, 4/19 JR
11 called, meeting postponed to 2:30?

12 A That's what it says.

13 Q And that would be Jack Rugh calling you?

14 A Yes.

15 Q And would that refer to the meeting that you
16 had made a note of earlier at the top of the page on
17 4/19?

18 A I don't know. I'm not putting much weight in
19 these notes because they are not assembled properly.
20 The dates are scattered all over the place.

21 Q Well, this is on the same page, though.

22 A If I made a note on the 19th, and then put a

1 note on the 17th below the 19th again, it may be right.
2 But as Mr. Cooper points out, your first note up at the
3 top of the page may say 4/17, not 4/19.

4 Q It may very well, sir.

5 In any event, this bottom note would appear to
6 be a reference to Rugh calling you and telling you that
7 the meeting he had earlier advised would be at 1:30 in
8 the DJRS library on 4/19 was being postponed to 2:30?

9 A It could be.

10 MR. COOPER: Objection, lack of foundation.
11 It might also have referred to the negotiation meeting
12 which Mr. -- well, I guess that would not have been
13 postponed.

14 Okay, I withdraw my objection.

15 (Recess.)

16 BY MR. KELLOGG: (Resuming)

17 Q Mr. Videnieks, now your notes that we have
18 been examining you about, appear to have made reference
19 to a meeting to take place on April 19 in the afternoon,
20 presumably 1982, at the DJRS office; is that correct?

21 A Could have been a telephone conversation.
22 Didn't we discuss that before, trying to resolve whether

1 it was a meeting or a telephone conversation.

2 Q Well, I guess the notes don't make clear,
3 except that the bottom note there, at the bottom of the
4 third page, it says, JR called meeting postponed to 2:30.

5 A Right.

6 Q So presumably, if that's what he was talking
7 about, it was a meeting and not a telephone call.

8 A Right, but for which day.

9 Q In any event, do you recall attending a
10 meeting at the DJRS office with Mr. Rugh, Mr. Brewer,
11 perhaps this Don Manson that is mentioned in your notes,
12 and a Bob Gorman?

13 A I don't specifically remember Gorman, but I
14 remember meeting with these individuals that you just
15 named and Inslaw personnel around that timeframe around
16 approximately that subject.

17 Q I'm going to ask you some questions about what
18 you recall about that meeting, whatever date it occurred.

19 What is your recollection of what transpired
20 at that meeting?

21 A Can you be a little more specific, which area
22 you are interested in?

1 Q I would just like you to take the thing as you
2 sit here today and recall it from the beginning, to your
3 recollection.

4 What matters were discussed, who said what, to
5 the extent you can recall it here today.k

6 A I can't recall who said what. In general, the
7 matters discussed were the EOUSA task under the OJRS
8 contract and funding problems associated with it, or
9 spending problems, maybe.

10 Unless I am prompted with some documents you
11 can show me, some notes I may have taken that you may
12 have, I can't remember anything really in detail; unless
13 I am prompted, I really can't.

14 Q Do you remember making any notes of your own
15 of that meeting?

16 A I usually do. The quality varies.

17 Q Well, we've got notes of yours, handwritten
18 notes, that I've examined you about, right up to
19 apparently just before the meeting on the same date,
20 assuming it took place on April 19th; but we don't have
21 any notes of that meeting.

22 Do you recall making notes of the meeting?

1 A I don't recall, but I may have.

2 Q If you did, do you recall destroying the notes
3 at anytime?

4 A No, I don't.

5 Q If you had destroyed them, do you think you
6 would recall it?

7 A I definitely would.

8 Q So you would deny that you ever destroyed any
9 notes that you made of that meeting, if you had made any?

10 A Yes, and I would not appreciate such
11 allegations, either.

12 Q I'm not alleging it; I'm just asking the
13 question.

14 Now, do you recall, as you sit there, anything
15 being discussed in this meeting about the matters that
16 were addressed in Mr. Hamilton's memorandum that was
17 marked as Exhibit 7A?

18 A Which meeting are you talking about?

19 Q I'm talking about what we assume was an April
20 19, 1982 meeting at DJRS, at which you were present

21 together with --

22 A You are assuming --

1 MR. COOPER: Hold on, objection. Lack of
2 foundation. As I recall the witness' testimony, he
3 stated that he recalled being at a meeting which
4 included both Inslaw personnel and OJRS personnel.

5 I don't know -- I don't think you've
6 established any foundation that there was indeed a
7 separate meeting at OJRS that only involved Department
8 of Justice personnel.

9 MR. KELLOGG: I didn't intend to imply --

10 MR. COOPER: The meeting on April 19th was
11 held -- oh I apologize, it was held at OJRS. Excuse me,
12 that's what you were referring to.

13 MR. KELLOGG: That's what I'm referring to.

14 THE WITNESS: The meeting in which Inslaw
15 participated?

16 BY MR. KELLOGG: (Resuming)

17 Q Yes, together with, as I said, yourself, Mr.
18 Ruhe, Mr. Brewer, Mr. Manson, a Bob Gorman, and a John
19 Wilson.

20 Do you recall such a meeting?

21

22

1 A I can't recall the faces of Wilson or Gorman.

2 Q I stand corrected. Also in attendance at this
3 meeting, according to the notes we have, were Joyce
4 DeRoy and Jim Kelly.

5 A Okay.

6 Q In any event, I understood you to say that
7 although you didn't know exactly what day it was, you do
8 remember going to such a meeting?

9 A I remember a meeting at OJRS with Joyce DeRoy
10 there.

11 Q And with Mr. Brewer and the other people I
12 mentioned?

13 A They probably would have been there, yes.

14 Q Now, my question is at that meeting at you
15 recall, do you recall Mr. Brewer discussing anything
16 about Mr. Hamilton's memo that was marked here as
17 Exhibit 7A or the issues that are involved in that, the
18 enhancement proprietary rights INSLAW claims?

19 A I don't recall discussion of that memorandum.
20 I think the issues may have been raised there. I think
21 the issues at that meeting deal with primarily were cost
22 growth under the OJRS contract, EOUSA's budgetary

1 problems, interrelationship with the new contract and
2 existing contracts.

3 You know, the other issues I don't
4 specifically recall as having been discussed. I would
5 primarily be concerned with the issues that I just
6 enumerated.

7 Q Well, you could be concerned with any issue
8 relating to --

9 A Right, primarily. I knew what my priorities
10 were at the time, and I just told you what I would be
11 concerned with.

12 Q Yes, but my question to you is if anything
13 regarding the PROMIS implementation contract that you
14 were the contracting officer on was discussed, you would
15 be concerned with that, wouldn't you?

16 A But anything gets prioritized. Priorities to
17 me at the time were cost concerns.

18 Q You would have been concerned about cost
19 concerns?

20 A Are you tell me what I would be concerned
21 about?

22 Q I'm asking.

1 A Please form it as a question.

2 Q I am. You answer the questions I put, and I
3 have to ask them.

4 A So that I can understand them.

5 Q I'll try to do that, and if I don't then I'll
6 try to make it so you do.

7 A Please do.

8 Q Would you not have been concerned also with
9 matters relating to cost under the PROMIS implementation
10 contract if they were discussed?

11 A Sure.

12 Q Do you recall during this meeting that we're
13 talking about, do you recall Mr. Brewer getting
14 particularly exorcised at any point in the meeting?

15 A Not really, no.

16 Q Well, do you recall during the meeting whoever
17 the presiding official was, Mr. Gorman I gather --

18 A If he were there. I don't recall if Gorman
19 was there or not. I cannot visualize his face. Neither
20 can I visualize what Wilson looked like. I don't know
21 who the senior official was aside from Manson.

22 Q Well, whoever the official was, I take it it

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1 A Please form it as a question.

2 Q I am. You answer the questions I put, and I
3 have to ask them.

4 A So that I can understand them.

5 Q I'll try to do that, and if I don't then I'll
6 try to make it so you do.

7 A Please do.

8 Q Would you not have been concerned also with
9 matters relating to cost under the PROMIS implementation
10 contract if they were discussed?

11 A Sure.

12 Q Do you recall during this meeting that we're
13 talking about, do you recall Mr. Brewer getting
14 particularly exercised at any point in the meeting?

15 A Not really, no.

16 Q Well, do you recall during the meeting whoever
17 the presiding official was, Mr. Gorman I gather --

18 A If he were there. I don't recall if Gorman
19 was there or not. I cannot visualize his face. Neither
20 can I visualize what Wilson looked like. I don't know
21 who the senior official was aside from Manson.

22 Q Well, whoever the official was, I take it it

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1 was somebody at DJRS, from DJRS, was the presiding
2 official?

3 A Since it took place in their facilities, I
4 would assume so.

5 Q Whoever it was, do you recall Mr. Brewer
6 getting excited, for lack of a better term, to a point
7 where the person recessed the meeting and asked Mr.
8 Kelly and Ms. DeRoy to leave the room?

9 A Do I understand you to say that DeRoy and
10 Kelly were thrown out?

11 Q No, no, no. I'm just saying that do you
12 recall as a result of Mr. Brewer becoming excited and
13 emotional, for lack of any better description, at a
14 particular point in the meeting that the presiding
15 official kind of, well, the presiding official simply
16 asking Mr. Kelly and Ms. DeRoy to step out of the room
17 for a few moments until things got calmed down?

18 A No, but a practice of caucussing in these
19 kinds of meetings is common. I don't recall it.

20 Q Do you recall any instance where Mr. Kelly and
21 Ms. DeRoy were asked to step out of the room for any
22 reason during that meeting?

1 A No, I don't.

2 MR. KELLOGG: Mark this, if you will, as the
3 next number.

4
5 (The document referred to
6 was marked Videnieks Exhibit
7 No. 9 for identification.)

8 BY MR. KELLOGG: (Resuming)

9 Q Take a look, if you will, at what is marked as
10 Exhibit 9. I ask you to just read that over, please,
11 Mr. Videnieks, to yourself.

12 (Pause.)

13 A Okay, I've read it.

14 Q Now, this, Mr. Videnieks, is an internal
15 INSLAW memo regarding this meeting that we've been
16 examining you about prepared by Mr. Kelly and Ms. DeRoy,
17 as you can see, a couple of days after the meeting.

18 And as I read through it, I think I may have
19 been mistaken in asking you about the people from OJRS
20 having asked Mr. Kelly and Ms. DeRoy to leave the room,
21 because it appears here in the memo itself that Mr.
22 Gorman, Mr. Wilson and Mr. Manson, after the conclusion
of their matters, left the room themselves, at least

1 according to the memo.

2 A Could be. I don't recall.

3 Q Do you recall any such division of the meeting
4 dealing first with the QJRS matter and then the QJRS
5 people leaving and a continuation of the meeting
6 regarding the PROMIS implementation contract?

7 A I don't recall any. I don't recall, no, sir.

8 Q Well, the memo, as you can see, recites
9 essentially about nine points that the two people
10 involved indicate were made in this second part of the
11 meeting, if you will, by Mr. Brewer.

12 Now, do you recall Mr. Brewer making any of
13 these points that are listed in those nine points at the
14 meeting?

15 A I think Brewer was concerned about cost
16 performance under the existing contracts. He was
17 concerned about a budget. Sometimes he gets emphatic
18 about issues. They are serious issues.

19 I don't recall -- what's the word -- tirade
20 and scurrilous referred to in the memo. Sometimes Brick
21 makes his points emphatically like I do.

22 Q Do you recall Brick making these points as

1 specified here emphatically on that occasion?

2 A I don't recall specifically this heavy
3 artillery. What I do recall is discussion of the
4 interrelationship of these contracts.

5 Q So you do recall Brewer discussing --

6 A That was the reason for the meeting, yes.

7 Q -- the PROMIS implementation contract?

8 A The pilot contract, the implementation
9 contract, the OJRS contract. That was the purpose of
10 the meeting. My notes indicate that, so those topics
11 were discussed.

12 Q All right, and do you recall Mr. Brewer saying
13 early in the meeting that a lot of his concern, his or
14 his and Rugh's, arose from a memo by Bill Hamilton that
15 was circulating in the Department?

16 A That I don't recall specifically. It could be
17 this would be another memorandum aside from the one that
18 was introduced earlier, aside from this PROMIS 2
19 memorandum.

20 Q I'm not saying -- I'm assuming that it's the
21 same one, and that it would have been at the same time,
22 April 2, that this memo, 7A, was delivered to Mr. Morris.

1 A That memorandum could have been discussed. I
2 don't specifically recollect it.

3 Q Do you recall, and this is -- strike that.

4 Ms. DeRoy testified that it was her
5 recollection that at this meeting an OJRS official did
6 ask both herself and Mr. DeRoy to leave the room
7 temporarily until Mr. Brewer could regain his composure.

8 Do you have a recollection of that occurring?

9 A I don't recall that. I don't recall any
10 caucussing by either side.

11 Q And you don't recall any outburst that would
12 be consistent with such an event as this, outburst by
13 Brewer?

14 A I don't recall that, no.

15 Q But you do recall that Brewer was making his
16 points emphatically about this?

17 A I think his concerns were extensive, and he
18 was emphatic.

19 Q Do you recall him saying that his concerns --

20 A I don't specifically recall anything, but I
21 think the topics discussed were of such a nature where
22 he could very well have been emphatic.

1 Q But do you recall him saying that the source
2 of his concern was a memo by Bill Hamilton circulating
3 in the Department?

4 A No.

5 Q Did you ever have an occasion to either meet
6 or speak on the telephone with an attorney by the name
7 of James Rogers who was an associate of Mr. Hills, the
8 attorney who wrote the letter to Mr. Morris that was
9 marked here Exhibit 7?

10 A To the best of my knowledge, no.

11 Q Did anybody from the Civil Division ever
12 discuss with you aspects of the data rights issue that
13 was raised in Exhibit 7 and 7A in the letter and the
14 memo to Mr. Morris?

15 MR. COOPER: By way of clarification, counsel,
16 you mean during this period of time? For example, not
17 discussions I had with Mr. Videnieks in preparation for
18 his deposition?

19 BY MR. KELLOGG: (Resuming)

20 Q Excluding discussions, obviously, with Mr.
21 Cooper. Yes, I'm talking about in the period between
22 April of '82 and I believe it's August of '82 when Mr.

1 Morris submitted or sent a response to this inquiry to
2 Mr. Hills.

3 During that period, do you recall --

4 A I don't recall that. That does not mean --
5 that does not exclude the fact that it could have
6 happened. I don't recall, no.

7 Q Well, do you ever recall either reviewing,
8 seeing or hearing about a legal memorandum that was
9 prepared in the Civil Division by a Mr. DiPietro?

10 A I think it's gone through my hands and
11 probably it's in my file. I recognize the name.

12 MR. KELLOGG: Before I get to that, I want to
13 ask that this be marked as 10 for identification.

14 (The document referred to
15 was marked Videnieks Exhibit
16 No. 10 for identification.)

17 THE WITNESS: I have not read it, but by
18 appearance it does not ring a bell.

19 BY MR. KELLOGG: (Resuming)

20 Q You say you don't recall ever seeing it before?

21 A I don't recall. That does not mean that I
22 don't have it in my file someplace.

1 MR. COOPER: Could you identify Exhibit 10 for
2 the record?

3 MR. KELLOGG: For the record, Exhibit 10
4 consists of a cover letter from Mr. Rogers to Mr. Morris
5 dated May 26, 1982 attached to a separate letter from
6 Mr. Rogers to Mr. Morris also dated May 26, 1982, and
7 the attachment is two and a half pages long, whereas the
8 cover letter is just two sentences and one page.

9 BY MR. KELLOGG: (Resuming)

10 Q Now, your testimony is, Mr. Videnieks, that as
11 you look at these, you don't have any recollection of
12 ever having seen these before?

13 A The letterhead is familiar. Of course, the
14 Stanley Morris name and position are familiar. The
15 general topic I'm familiar with obviously, but I don't
16 recall seeing this letter specifically. That does not
17 mean it is not in my file.

18 Q Did there ever come a time that you learned
19 that Mr. Hillis had made an inquiry to Mr. Morris as
20 reflected in Exhibit 7 and the attached memorandum 7A
21 about the data rights issue? Did you ever learn that
22 such an inquiry had been made?

1 A During the life of the contract, I became
2 aware that several law firms of some stature or some
3 senior attorneys with connections were contacting high
4 DOJ officials, and this apparently is one of them.

5 Hills means nothing to me as a name. For
6 example, Mr. Richardson would. That would be, to me, I
7 would recall much better what Richardson was doing, but
8 I would not recall if someone nor it wouldn't really
9 impress me much, either. Just another attorney and
10 another letter.

11 Q My question is not so much who it is, but it's
12 a question did you ever learn that a request had been
13 made of Mr. Morris on behalf of INSLAW to do anything
14 regarding this data rights issue.

15 A Sometime during the administration of this
16 contract, I received copies of letters concerning that
17 issue and obviously became aware.

18 Q Do you recall becoming aware of this inquiry
19 before Mr. Morris responded to the inquiry which was in
20 August of '82?

21 A I cannot identify these events, put it in a
22 time frame, because usually I was not in that line of

1 communication. I was not, and I received copies
2 significantly after the fact, routed down through
3 various individuals. This is for your contract file.

4 Q Would I take it from that, then, that -- and
5 you tell me whether this is accurate or not -- if you
6 would take it from that, then, that you would have no
7 recollection of ever being consulted by anyone in
8 connection with the preparation of a response by Mr.
9 Morris or anyone working pursuant to his direction, a
10 response to the May 1 or May 2 inquiry reflected in
11 Exhibit 7 and 7A?

12 A To the best of my knowledge, no.

13 Q And that so far as you can recall, if you ever
14 did learn about the inquiry having been made, it
15 probably could have been even after the response was
16 actually issued?

17 A I did not receive the copies of any letters
18 that I did receive as action items. Usually they were
19 after the fact.

20 Q Now, did you ever hear from any source that or
21 in the course of responding to this or preparing a
22 response, I should say, to this inquiry that is

1 reflected in Exhibit 7A, 7 and 7A to Mr. Morris, that
2 Mr. Morris had requested that Mr. Brewer be excluded
3 from any role in preparing a response?

4 A No.

5 Q You've never heard that up until today?

6 A I may have heard it. Similarly, there are
7 letters in the file asking that I be removed from
8 administering the contract. I have heard roundabout. I
9 can't pin it down to a time frame or anything.

10 MR. COOPER: Listen to his question.

11 BY MR. KELLOGG: (Resuming)

12 Q Mr. Videnieks, I'm not asking you about
13 hearing about INSLAW asking to remove Mr. Brewer.
14 That's not my question.

15 My question is did you ever hear from any
16 source at any time that Mr. Morris had requested that
17 Mr. Brewer step aside and not have any role in preparing
18 a response for Mr. Morris to give to this inquiry that
19 was made --

20 A To the best of my knowledge, never.

21 Q Did you ever have any discussions about this
22 matter, this issue with Mr. McWhorter?

1 A I don't think so, no.

2 Q The reason I ask that is that there is
3 evidence from Mr. McWhorter that it was Mr. McWhorter
4 who was asked to take the lead role in preparing a
5 response, or take a lead role at least insofar as the
6 EOUSA was concerned, to the exclusion of Mr. Brewer, and
7 you don't recall any discussions with Mr. McWhorter
8 about that subject?

9 A No.

10 Q Now, do you recall ever having any discussions
11 with Mr. Brewer in which the subject of Mr. Morris'
12 response to the request as set forth in Exhibit 7 was
13 mentioned?

14 A Repeat that, please?

15 MR. COOPER: Can I make a suggestion, because
16 I think that the various depositions to which you have
17 referred will reflect that there were various responses
18 to those letters, intermediate letters, that might help
19 the witness, if you want to, to show him a copy of the
20 August 1982 letter, and that may help him know whether
21 he saw it.

22 (Pause.)

1 MR. KELLOGG: Would you mark this Exhibit 11?

2 (The document referred to
3 was marked Videnieks Exhibit
4 No. 11 for identification.)

5 BY MR. KELLOGG: (Resuming)

6 Q Would you take a look at Exhibit 11, Mr.
7 Videnieks. That is a draft of a letter which I will
8 tell you was sent to Mr. Hills in identical form as that
9 by date of August 11, 1982.

10 First of all, have you ever seen that before
11 or the subsequent letter based on that draft?

12 A Yes, I've seen -- I think I've seen this
13 letter.

14 Q All right. Now, when I refer in my question
15 to Mr. Morris' response to Mr. Hills, this is the
16 response that I'm talking about, the one that was made
17 based on this draft which is Exhibit 11.

18 My question is did you ever discuss Mr.
19 Morris' response as set forth there in Exhibit 11 with
20 Mr. Brewer?

21 A Ever?

22 Q Yes, ever.

1 A I may have, but I don't recall it.
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1 Q Do you have any recollection of ever
2 discussing the fact or the subject of Mr. Morris'
3 response as set forth there in Exhibit 11 with Mr.
4 Brewer?

5 A We may have discussed it. I probably
6 discussed it with other people, too. But it was not my
7 action item.

8 I may have discussed it. The answer is, I may
9 have discussed it.

10 Q But I take it, if you did, you don't have any
11 specific recollection of having discussed it with Mr.
12 Brewer?

13 A Not a specific recollection.

14 Q Do you ever recall Mr. Brewer saying anything
15 to you about this Morris response in Exhibit 11?

16 A He may have. I don't specifically recall it.

17 Q Do you recall him expressing anything critical
18 of that response?

19 A I don't.

20 Q Do you recall anyone else who worked at EDUSA
21 at the time being critical of Mr. Morris' response as
22 set forth there in Exhibit 11?

1 A I don't recall that, no.

2 Q Do you ever recall Mr. McWhorter criticizing
3 that response?

4 A No, sir.

5 Q Now, let me just ask you this as a
6 hypothetical question.

7 If you had known during this period of time
8 between April and August of 1982 that Mr. Morris had
9 asked Mr. Brewer to step aside from any involvement in
10 preparing a response to this question that resulted in
11 Mr. Morris' August 11, '82 letter, would you have had
12 any concern, as a contracting officer, with Mr. Brewer's
13 continuing role as the program manager?

14 A No, sir.

15 MR. COOPER: Objection. You can answer.

16 THE WITNESS: No, sir.

17 BY MR. KELLOGG: (Resuming)

18 Q And why would you not have had any concern?

19 A The letter does not say that Mr. Brewer is
20 going to be reassigned. It is not related to the matter.

21 Q In other words, I guess that if Mr. Morris had
22 asked him to step aside for this particular part of it,

1 but not for the rest of the contract, it wouldn't be of
2 any further concern to you?

3 A I think as we previously discussed, at one
4 point the civil division was charged with writing a
5 letter.

6 Now another organization chose to write a
7 letter on that topic.

8 Q Well, the civil division was asked to prepare
9 the response, together with the executive office
10 people's input, response, for Mr. Morris to give; isn't
11 that right?

12 A Well, you tell me.

13 MR. COOPER: Objection; lack of foundation. I
14 think the witness has stated he wasn't involved. I
15 think that may explain in part the witness' answer.

16 Based on his testimony, he really wasn't
17 involved with this process.

18 BY MR. KELLOGG: (Resuming)

19 Q All right, now, do you recall, Mr. Videnieks
20 -- strike that.

21 I take it at some point in here in 1982 this
22 DC pilot contract between Inslaw -- with Inslaw, that

1 was terminated, was it not?

2 A No, sir.

3 MR. COOPER: Off the record.

4 (Discussion off the record.)

5 MR. KELLOGG: Back on the record

6 BY MR. KELLOGG: (Resuming)

7 Q Do you recall a contract between Inslaw and
8 the District of Columbia, U.S. Attorney's Office, being
9 terminated during this 1982 timeframe?

10 A I don't recall that, no.

11 Q Do you ever recall Mr. Brewer making a
12 statement in which he in effect took credit for having
13 that contract terminated?

14 A No, to the best of my knowledge, the D.C. U.S.
15 Attorney's Office does not or did not have procurement
16 authority.

17 So your question, the line of questioning is
18 very unclear.

19 Q Does that mean that if there was a contract
20 between Inslaw and the U.S. Attorney's Office -- strike
21 that.

22 If there was a contract for Inslaw to provide

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1 services for the use of the D.C. U.S. Attorney's Office,
2 that contract would have been with the Department of
3 Justice; is that what you're saying?

4 A Yes, sir.

5 Q And my question is, assuming there was a
6 contract, do you recall which was terminated, do you
7 recall Mr. Brewer ever saying that he was the one who,
8 in effect, got that contract terminated?

9 A I don't recall any contract with Inslaw --
10 that doesn't mean that there weren't any -- that was
11 terminated for default or convenience other than the
12 PROMIS contract which I was administering.

13 Q Now, there came a time, I believe in the fall
14 of 1982, when Mr. Brewer made a request to the Justice
15 management division that you be assigned fulltime to the
16 executive office to assist in the oversight and
17 implementation and so on of this PROMIS Inslaw contract;
18 is that correct?

19 A I don't know.

20 Q Your testimony is that you don't know whether
21 Mr. Brewer ever asked to have you assigned fulltime to
22 the executive office of U.S. Attorneys to work on this

1 contract?

2 A I don't know that, nor have I ever been
3 assigned fulltime.

4 (A document was marked
5 Videnieks Exhibit No. 12 for
6 identification.)

7 BY MR. KELLOGG: (Resuming)

8 Q Take a look at what's been marked as Exhibit
9 12, please. It's two pieces of paper stapled together.

10 A Obviously, they made such a request. As a
11 matter of fact, I am always, throughout my six years at
12 the Department of Justice, supported other organizations
13 as well as EOUSA, with EOUSA the primary organization I
14 was supporting.

15 But the request obviously was made.

16 Q Now your testimony is that until I asked you
17 this question here today, you had no knowledge that Mr.
18 -Brewer had in fact made the request?

19 A Now that I looked at it, the memo, either this
20 one or that one, looks familiar. But as a matter of
21 fact, I always worked on contracts from several
22 organizations.

1 Q All right, now in the second page of that
2 exhibit, the memorandum from Mr. Brewer to Mr. Tyson, in
3 which he asked Mr. Tyson to send the first page, which
4 is a memo apparently that he drafted, from Mr. Tyson to
5 Mr. Rooney, who was then the assistant attorney general
6 in charge of the Justice management division in which
7 you worked.

8 Mr. Brewer says in his memo that the executive
9 office had agreed to reimburse JMD in full for the cost
10 of your services.

11 Did you have knowledge that that had taken
12 place, or that a commitment like that had been made by
13 EOUSA?

14 A Yes, a common practice. Civil division
15 pursued a similar plan with another contracting officer,
16 and I understand, another organization of Justice, OJD,
17 did the same thing.

18 And I understand the antitrust division did
19 the same thing.

20 Q So that was a common practice, in your
21 understanding?

22 A And I think to some extent -- I am no longer

1 under such an agreement between organizations, but there
2 may be other individuals.

3 Q But it's your understanding that such a
4 practice was, at least at the time, a common practice
5 within the department?

6 A It was a practice. Let's say, I was not the
7 only one, throughout my six years with the Department of
8 Justice, I was not the only contracting officer under
9 such a plan.

10 Q Do you think it would be fair to describe that
11 practice as extraordinary?

12 A I wouldn't describe it as extraordinary. I
13 think it's a flexible approach to meet research needs.

14 Q Do you recall Mr. Brewer raising with you any
15 concerns prior to this time here, September of '82, that
16 your other duties were requiring that you spend -- that
17 your other duties were such that you weren't able to
18 spend sufficient time on the Inslaw contract?

19 A I recall from time to time that I would have
20 to tell Mike Snyder, the COTR, or Jack Rugh, or Brick,
21 that some actions would have to await so I could fulfill
22 other tasks which were higher on the priority list, but

1 not necessarily from EOUSA.

2 Q And other tasks, by that, you would mean other
3 tasks --

4 A Procurements for other DOJ organizations.

5 Q Not involving Inslaw?

6 A Not involving Inslaw, correct.

7 Q And do you recall any specific tasks that Mr.
8 Brewer wanted you to perform that you told him that they
9 would have to wait?

10 A Well, for EOUSA I was administering three
11 major contracts, two of them larger in dollar size than
12 the Inslaw contract.

13 That was a fairly time consuming task. In
14 addition to that, I had other non-EOUSA contracts to
15 take care of, and there came times when I imagine it may
16 have bothered Brick that I would do some other things.

17 Q But the reason that he is asking to you have
18 assigned here doesn't have anything to do with the other
19 EOUSA contracts that you were administering, but the
20 PROMIS contract, isn't that right?

21 A Maybe it says so. Maybe you could point out
22 to me where it says so.

1 Q Look on the second page of Exhibit 11.

2 A Which line?

3 Q Well, start right at the beginning. As you
4 are aware --

5 A Well, I will read it again.

6 (Pause.)

7 A The first sentence basically reinforces what I
8 just said, that we're not talking about one contract but
9 about three.

10 Q Going to the third paragraph, if you will,
11 starting where he says, these diversions, speaking about
12 your other duties, these diversions have adversely
13 affected our efforts at implementing PROMIS, because Mr.
14 Videnleks, through no fault of his own, has been
15 unavailable for consultation at crucial periods in the
16 computer procurement, the word processor procurement,
17 and in the administration of the Inslaw contract.

18 Now do the first two that he mentioned, the
19 computer procurement and the word processor procurement,
20 are they unrelated to the Inslaw contract?

21 A They are related. They are for the hardware,
22 which the government furnished to Inslaw for performance

1 of the PROMIS contract.

2 Q And then the last sentence says, in the latter
3 concern, that is, the administration of the Inslaw
4 contract, it is my opinion that the only way to maintain
5 our schedule within budget is to rigorously monitor
6 Inslaw's efforts.

7 Clearly in that last sentence he's referring
8 specifically to the need to monitor Inslaw's activities
9 under the contract; isn't that right?

10 A Sure.

11 Q Now, did there come a time in the fall of 1982
12 when you learned that Inslaw had changed banks, and made
13 an additional borrowing from its then new bank?

14 A Fall or late fall, yes.

15 Q And how did you learn that, sir?

16 A I don't specifically recall, but I do remember
17 that I was shown the instrument by Murray Hannon in
18 EOUSA facilities, in that timeframe.

19 Q Is it your recollection that you became aware
20 of this because Mr. Hannon showed it to you, or did
21 someone else call it to your attention before that?

22 A There was a reason why Mr. Hannon came to our

1 office and showed it to us.

2 Q And that action means that somebody on the
3 government side --

4 A It may have been an auditor. It may have been
5 --

6 Q Well, it would perhaps refresh your
7 recollection to know that Mr. Whiteley, who I believe is
8 the auditor, testified that he discovered this during
9 this timeframe, during an audit, and that he made
10 mention of it to you, I don't know whether alone or
11 among others.

12 But does that ring any bells with you, sir?
13 Do you recall Mr. Whiteley mentioning that fact to you?

14 A I don't recall him mentioning it to me, but
15 that's probably how it happened.

16 Q When you learned of that fact, presumably from
17 Mr. Whiteley, or from whatever source, was that a cause
18 of concern to you, sir?

19 A Yes, it was.

20 Q And why was that?

21 A It was shortly after award of the contract,
22 and it was in violation of the advance payments

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1 provision of the contract.

2 Q All right, and why did you feel it was a
3 violation of the advance payments provision in the
4 contract?

5 A It was specifically against one of the
6 covenants in that particular contract article; and if we
7 had it in front of us, we could probably identify it.

8 My letters to Inslaw, which I issued to them
9 once notifying them of the possibility that advance
10 payments may be discontinued, refers to the specific
11 contract provision.

12 Q And before you issued any letter regarding
13 this advance payments -- strike that.

14 Just so that I can understand, what do you
15 mean when you use the term, advance payments, in
16 reference to this contract?

17 MR. COOPER: I want to first make an
18 objection, because that calls for a legal conclusion.
19 Since the term, advance payments, as opposed to other
20 types of payments under government contracts, is a term
21 of art and has certain legal meanings and is subject to
22 countless legal opinions with ample precedent as to the

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1 distinction between advance payments and other types of
2 payments under government contracts.

3 But other than that, I'll let the witness
4 answer.

5 MR. KELLOGG: I just want to know what he
6 means by it.

7 THE WITNESS: Payments in advance of
8 occurrence of cost -- in advance of reimbursement for
9 incurrence of cost, established in accordance with a
10 specific schedule geared to the contractor's cash flow
11 needs.

12 BY MR. KELLOGG: (Resuming)

13 Q Well, I want to ask you to repeat that.

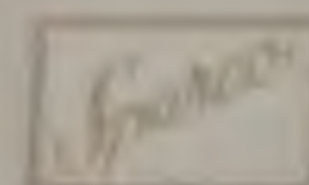
14 MR. COOPER: It sounds like one of those legal
15 opinion.

16 MR. KELLOGG: It sounds worse than a legal
17 opinion, which usually is bad enough.

18 BY MR. KELLOGG: (Resuming)

19 Q You say it's a payment?

20 A You see we have a cost reimbursement
21 contract. Normally, under that type of contract, the
22 contractor incurs costs or books them, and then submits



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1 a voucher and gets reimbursed.
2

3 In this case, we went a step further and moved
4 up a month ahead of that time, advance the contract for
5 cash so that we could incur those costs.

6 Q So that I understand, you don't mean, do you,
7 that for example on the day the contract was signed,
8 before Inslaw did anything under this contract, that the
9 Department of Justice advanced any payment?

10 A I don't recall when the first check, or the
11 amount of it, when it was presented to Inslaw, and when
12 I checked off on it.

13 Q I ask you, sir, if it is a fact that as it's
14 used in this contract, this whole business of advanced
15 payments, that all that means is that the contractor
16 performs particular services, certifies in writing that
17 those particular services have been performed, and then,
18 acting on that, you as the contracting officer had
19 authority which you wouldn't otherwise have had, to
20 actually release funds to them for that work that they
21 had done, but to do it immediately or very promptly;
22 isn't that true?

A I don't understand your question, and I think

1 It's not true.

2 Q Well, let me try to make my question clearer.

3 MR. COOPER: Why don't you just ask him --

4 THE WITNESS: Why don't you split it up into

5 parts?

6 MR. COOPER: Ask him how it works.

7 BY MR. KELLOGG: (Resuming)

8 Q You tell me how, in your understanding, how

9 this advance payment arrangement under this contract

10 actually worked?

11 A How it worked?

12 Q Yes. What did the contractor Inslaw have to

13 do to get any advance payments?

14 A Physically, Inslaw would prepare a check, and

15 I forget now to who it was made out to, it must have

16 been to Inslaw, had an Inslaw official sign it -- and

17 this is the best of my recollection -- sign it, and then

18 come to me for a counter-signature, and then went for a

19 third signature, and got the money.

20 Q All right, but was there any document that had

21 to be provided to you as a basis for asking you to sign

22 a check?

Handwritten signature

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1 A The contractor kept track of the advance
2 payments on his cost reimbursement vouchers, if I
3 recollect correctly.

4 Initially, before I would authorize the
5 advance payment, I would get confirmation from the audit
6 staff, either telephonic or in writing, before we
7 released that payment.

8 Q And you wanted to get confirmation of what,
9 sir?

10 A Confirmation to see whether the amounts of the
11 check bear a relationship to the cash flow needs of the
12 contractor.

13 Q And is it your testimony, sir, that the
14 amounts of the requested advance payments had not
15 relationship to any work that had actually been done at
16 that point in time?

17 A The cost reimbursement vouchers, when
18 substantiated by cost categories, what costs had been
19 incurred.

20 Q Well, that's my question. So when they
21 presented you with a request for a quote advance payment
22 --

1 A It was usually supported by information on a
2 voucher.

3 Q And the voucher at least said in writing,
4 Inslaw was saying in writing that it had incurred these
5 costs; isn't that right?

6 A Right.

7 Q Already incurred them; not that they were
8 going to?

9 A Incurred, or under a cost reimbursement
10 contract, one can voucher for incurred cost and costs
11 booked, so not in all cases were the costs incurred.

12 Q But it might be incurred in an accounting
13 sense, if they do it on an accrual --

14 A I'm not an accountant.

15 Q Well, neither am I. But one way or another,
16 before they got any money, they had to certify to you in
17 writing that these costs had either been actually
18 incurred, or had been booked; isn't that right?

19 A I think it's right. Particularly under the
20 prompt payment act, which was enacted around that
21 timeframe, the payment, the reimbursement of cost, took
22 30 days.

1 Q Yes, and this speeded that process up by 30
2 days, 20 days, or whatever?

3 A Correct. Generally, that's the way I
4 recollect.

5 Q But it did not represent actually paying the
6 contractor in advance of the contractor either incurring
7 the cost or booking the cost; isn't that right?

8 A I don't recall specifically. I would have to
9 see vouchers and compare the checks, the amounts of the
10 checks with the vouchers.

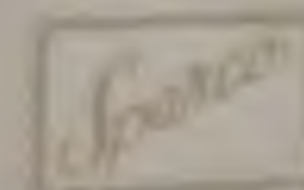
11 Q Well, I ask you sir if it isn't a fact that
12 this whole business of the advanced payments, that all
13 that meant is that the contract, Inslaw, got paid
14 exactly what they would have gotten paid without the
15 advance payment arrangement. It's just that they got
16 paid 30 days or less earlier.

17 A I would have to compare the cash flow to give
18 you an answer on that, and I'd probably need the
19 assistance of an auditor.

20

21

22



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1 MR. COOPER: Ask him what happened, not what
2 would be fair.

3 THE WITNESS: I'm getting a little confused.
4 Apparently, your line of questioning is not proper.
5 Okay, should I continue to answer?

6 MR. COOPER: No, no, no. Do you know if A
7 through D on these notes were topics of discussion that
8 occurred in a meeting at which certain people were
9 present? Do you know?

10 THE WITNESS: I don't recall. These could
11 have been phone conversations. This could be a
12 consolidated note of several events. It could be
13 anything.

14 BY MR. KELLOGG: (Resuming)
15 Q Let me go back to your point, so that you
16 understand the procedural rules.

17 Mr. Cooper is entitled to make on the record
18 whatever objections he wants to make. Under the rules,
19 you have to answer notwithstanding the objection unless
20 Mr. Cooper orders you not to answer.

21 A Okay. So my answer is, I don't know whether
22 -- It looks like a neat note. My notes are not normally

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1 Q But conceptually, as you understand it, I am
2 correct, am I not, that under this advanced payment
3 arrangement INSLAW properly could not make a claim to
4 get payments until they could certify either that they
5 had actually incurred costs that would be reimbursible
6 under the contract or that they had booked such
7 reimbursible costs under the contract?

8 MR. COOPER: Objection. The question has been
9 asked and answered at least twice.

10 BY MR. KELLOGG: (Resuming)

11 Q That's correct, isn't it?

12 A The amount of advanced payments, advanced
13 payment schedule was linked to the cash flow requirement
14 of the contract.

15 Q Well, let me ask you this. It surely is the
16 case, isn't it, that INSLAW couldn't just come to you
17 under this contract and say, look, we need \$500,000. we
18 haven't done any work at all. We haven't booked any
19 costs. We haven't incurred any costs.

20 Now, if that was the case, they wouldn't get a
21 dime from you under an advanced payment, isn't that
22 right?

1 A If the advanced payment schedule set forth in
2 the contract had the level of advanced payments high
3 enough, they probably could have gotten it. That was
4 negotiated. That particular provision, the schedule of
5 payments and as it links to INSLAW's cash flow
6 requirements, was negotiated by Bob Whiteley.

7 Q Are you aware that Mr. Whiteley testified last
8 week that these advanced payments under this contract
9 were really just prompt government payments for work
10 that had already been performed?

11 A He may have testified to that.

12 Q If he did, you wouldn't have any reason to
13 dispute that testimony, would you?

14 MR. COOPER: Objection.

15 THE WITNESS: He's smarter than I am in that
16 area.

17 BY MR. KELLOGG: (Resuming)

18 Q In any event, there came a time -- strike that.
19 When this issue arose about the new bank,
20 borrowing from the Bank of Bethesda by INSLAW, do you
21 recall when you learned of this whether you were alone
22 or with anybody else, not including the person who was

1 giving you the information?

2 A I think I was in a conference room at EDUSA
3 when Murry Hannon walked in with a piece of paper.

4 Q But you indicated that you thought you must
5 have learned of the fact of the bank borrowing before
6 that, which is what prompted Mr. Hannon to bring that in?

7 A I don't recall what, when or how or what
8 precipitated Hannon's appearance.

9 Q Well, in any event, when you recall the event
10 when Mr. Hannon came into the EDUSA conference room with
11 this document in response to somebody's inquiry about
12 it, who else was present besides yourself and Mr. Hannon?

13 A I think Brewer may have been there and/or Mike
14 Snyder.

15 Q Do you recall Mr. Brewer making any statements
16 or taking any position as to what, if anything, should
17 be done as a result of this?

18 A No, I don't.

19 Q Would you deny that he took the position that
20 you should send -- strike that.

21 Do you recall either Mr. Brewer or Mr. Rugh or
22 anyone there in the Executive Office taking the position

1 that because of this advanced payment that you had just
2 learned of -- I'm sorry, I misspoke.

3 Because of the new bank borrowing that you had
4 just learned of that you should ask INSLAW to turn over
5 its source codes to its software?

6 A I don't specifically recall that, but I recall
7 several events occurring at the same time, generally
8 speaking.

9 Q What were those events?

10 A The notification that INSLAW had violated the
11 advanced payments provision of the contract.

12 At the same time, generally around the same
13 time, either as a result of at the evaluation of
14 INSLAW's statement as to what the impact of advanced
15 payments discontinuation might be, the audit staff
16 informed us either in writing or telephonically that
17 INSLAW may be in financial difficulties, and I think in
18 that relationship the EOUSA became concerned about work
19 in process which was in EOUSA hands.

20 Q All right, so that to your recollection it was
21 as a consequence of these events that you've testified
22 about, it was EOUSA that expressed a concern about

1 getting ahold of the INSLAW software source code?

2 A I think that that request originated with the
3 EOUSA.

4 Q As a matter of fact, it originated with Mr.
5 Rugh at EOUSA, isn't that right?

6 A I don't know.

7 Q Would it be fair to say that he certainly
8 wasn't opposed to that?

9 A Oh, sure. He was probably advised by his
10 subordinates. I mean, the sequence of who became
11 concerned first I cannot speculate on.

12 Q Do you ever recall Mr. Brewer expressing to
13 you or in your presence a concern about the need to get
14 ahold of the INSLAW software source code in this context?

15 A I don't specifically recall, but I'm sure that
16 I did express concern, as I'm sure others did.

17 Q As a result of that, what is your
18 recollection? What request was made first, the request
19 or the notice that you were going to shut off the
20 advanced payments or the request to turn over the source
21 code materials, which of those?

22 A I don't know. I can't recall the sequence of

1 events, but I can recall they are all related.

2 Q You indicated that the initial concern that
3 you had when you learned about the additional INSLAW
4 bank borrowing was that you felt that that was a
5 violation of the specific covenant in the contract
6 regarding the advanced payments; is that correct?

7 A Yes.

8 Q What, in your understanding, was the reason
9 why bank borrowing would be something that would be a
10 matter of concern with respect to the advanced payments
11 system or procedure?

12 A I don't understand the question. The
13 contractor violated a provision of the contract, and I
14 gave him a notification that he violated it.

15 Q My question doesn't go to whether or not it's
16 a violation of the contract. I'm just asking, as the
17 contract officer, what did you understand the reason for
18 not permitting additional bank borrowing without
19 notification to the government? What did you understand
20 the reason for that was?

21 A Why they didn't notify us?

22 Q No. Why did you understand, what was the

1 reason that the government needed to be notified? In
2 other words, why was this put in the contract, in your
3 understanding, if you know?

4 A The smarter minds than me wrote the
5 procurement regulations and proscribed the language to
6 be used.

7 Q So as far as you know, that's in all contracts?
8 A That is fairly standard language.

9 Q Well, I ask you, sir, if the fact of the
10 matter isn't that the reason for that is the presumption
11 that additional borrowing would generate a greater
12 financial risk to the company and a greater risk that
13 the company would go under?

14 A That could be a concern, yes.

15 Q But I guess, if Mr. Whiteley is correct that
16 these advanced payments in the context of this case
17 really does mean payment for work already done but
18 prompt payment, whereas if it was included in his
19 payment arrangement it would be payment in 30 days or 60
20 days or whatever the norm would be, I guess it's fair to
21 say that additional borrowing wouldn't increase any risk
22 regarding the advanced payments if the payments were for

1 work that had already been done anyway; is that right?

2 MR. COOPER: Object to your question because
3 of lack of foundation. You haven't established what
4 anyone has said. Your question is extremely
5 speculative. You've asked a question of the witness,
6 and the witness said this was a legal requirement, and
7 that's why it was put in the contract.

8 I just think it's a grossly unfair question
9 which really borders on legal argument. I just object
10 strenuously to the way in which you phrased that
11 question.

12 BY MR. KELLOGG: (Resuming)

13 Q Can you answer the question?

14 A I forgot it. Please repeat it.

15 Q I think I'll save it.

16 MR. KELLOGG: Mark that as 13.

17 (The document referred to
18 was marked Videnieks Exhibit
19 No. 13 for identification.)

20 BY MR. KELLOGG: (Resuming)

21 Q Mr. Videnieks, Exhibit 13, is that a copy,
22 excluding the handwritten highlighting that's put on

1 there, but apart from that, is that a copy of a letter
2 that you sent to Mr. Gizzarelli at INSLAW by date of
3 December 6, 1982?

4 A Yes.

5 Q In that letter, you are asking essentially for
6 copies of all of the source code materials for the
7 software used under the contract?

8 A Yes, there are seven items itemized on here.

9 Q But that includes what is colloquially
10 referred to as the source code for the software?

11 A I don't see source code referred to in here
12 unless I'm not seeing it.

13 Q I don't think the term is in there, but isn't
14 that what people refer to as source code?

15 A I don't know whether these seven items are
16 source code.

17 Q The computer programs themselves, the
18 underlying algorithms and all of that business?

19 A I'm requesting computer programs and
20 documentation.

21 Q Now, do you recall getting any response to
22 that in December 1982?

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1 A I specifically don't recall a response. It
2 does not mean I may not have received it.

3 MR. KELLOGG: Mark this as 14.

4 (The document referred to
5 was marked Videnieks Exhibit
6 No. 14 for identification.)

7 BY MR. KELLOGG: (Resuming)

8 Q Now, I show you what's been marked as Exhibit
9 14, a letter dated January of '83 which appears to
10 enclose additional copy, if you will, of the Exhibit 13
11 letter of yours to Mr. Gizzarelli which apparently got
12 lost in the mail somewhere.

13 Does that refresh your memory?

14 A Yes.

15 Q You recall it?

16 A I recall this letter, yes.

17 Q Now, sir, go back to Exhibit 13 a minute.
18 Now, you testified that the audit staff had indicated
19 that because of the bank borrowing, the additional bank
20 borrowing and that because of the possibility of
21 shutting off the advanced payments that the audit staff
22 was concerned that this would adversely impact INSLAW's

1 financial condition. Is that correct?

2 A I guess I testified that we were advised as a
3 result of events precipitated by INSLAW's violation of
4 the advanced payments provision of the contract that the
5 audit staff became involved and notified both the
6 contracting officer and the program office that INSLAW
7 was in precarious financial condition and thus everybody
8 concerned took steps to insure that our interests are
9 protected.

10 Q So I understand what you're saying here,
11 INSLAW makes an additional bank borrowing which you
12 don't find out about until several months later, as I
13 understand it. You find out about it in the fall of
14 '83, and the bank borrowing was made, say, six months
15 before. I'm sorry, I misspoke.

16 You find out about it in the fall of '82, and
17 the bank borrowing, the extra bank borrowing, had been
18 made in the spring of '82 shortly after the commencement
19 of the contract. Is that right?

20 A I think that's right.

21 Q When you learned about that, in your view
22 that's a violation of the advanced payments provision of

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1 the contract; correct?

2 A Yes.

3 Q Because the contractor is not supposed to make
4 any additional bank borrowings without advising you and
5 notifying you of it at the time. Isn't that right?

6 A Yes.

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1 Q All right. Now, when you found out about it,
2 the borrowing had already been made six months before,
3 correct?

4 A The line of credit had been established at
5 \$1.2 million. I don't know how much money actually had
6 been borrowed.

7 Q All right, but I guess my question is this.
8 Was the audit staff's concern that INSLAW's financial
9 condition already was bad because they had borrowed or,
10 on the other hand, was it that their financial condition
11 would be bad if you withdrew the advanced payments?

12 A I think the audit staff concluded that
13 INSLAW's financial condition is bad.

14 Q Well, after the contract went forward
15 beginning in March of '82, how frequently would you or
16 anybody from Justice get any financial statements of
17 INSLAW?

18 A Mostly unless they were late. Their
19 requirements were monthly financial management
20 statements, but the contractor sometimes was late, and
21 later on the contractor completely discontinued.

22 Q During this first six months of the contract,

1 did you get the monthly financial statements or not?

2 A Let's see the file so I can examine the file.

3 Q well, I'm asking you for your recollection.

4 A I don't recall whether I did or did not
5 receive them without examining the file to refresh my
6 memory.

7 Q If you didn't receive them, do you recall --

8 A I would have issued a letter to them that I
9 had not received them.

10 Q Do you recall issuing any such letter?

11 A I recall issuing one such letter.

12 Q During the first six month of the contract?

13 A I don't recall that.

14 Q Was there anything in the financial reports
15 that you did receive during the first six months that
16 reflected anything about the bad financial condition of
17 INSLAW?

18 A The format of those financial management
19 reports was not in the form of a financial statement of
20 the company. The financial report is geared towards the
21 performance of that specific contract. It was a
22 contract specific financial report.

1 Q So this is not a financial statement of the
2 company?

3 A No.

4 Q Were there any requirements under the contract
5 that INSLAW submit financial reports of the company
6 itself periodically?

7 A No. I'm positive, no. As a part of the
8 proposal, they submitted a financial statement, and also
9 they submitted a cash flow requirement statement to
10 substantiate their claim for the advanced payments
11 included in the advanced payments provision of the
12 contract.

13 Q In any event, in the fall of '82 when you say
14 the audit staff indicated that they thought that the
15 INSLAW financial condition was bad, who in the audit
16 staff advised you of that?

17 A I think it was -- it was Bob Whiteley.

18 Q What, if anything, did he recommend that you
19 do about that?

20 A I don't specifically recall, but I do recall
21 that it was, I believe it was a written -- it was a
22 memorandum, and --

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1 Q Do you recall whether he recommended that the
2 advanced payments be terminated?

3 A No, he did not recommend that.

4 Q Do you recall whether he recommended that the
5 government should take steps to get the source code and
6 the software?

7 A No, that was not a Bob Whiteley
8 recommendation. The recommendation to safeguard the
9 government's interest in this contract was made in part
10 upon Murray Hannon's statement that if advanced payments
11 were discontinued that he would not be able to meet his
12 December payroll.

13 So that, to us, indicated that, further
14 indicated that there must be some problems there and
15 that we should take action to protect our interests.

16 Q So it was Mr. Hannon who indicated that if you
17 shut off the advanced payments they could not make the
18 payroll?

19 A And I would say that Mr. Whiteley corroborated
20 that or also independently informed me.

21 Q That if the advanced payments were shut off
22 the company would have a heck of a time continuing to

1 operate, in effect?

2 A Yes. But that indicated a generally
3 precarious financial condition.

4 Q But presumably when INSLAW went into this
5 contract it was precarious enough that they had to ask
6 for advanced payments. Isn't that right?

7 A No, I would not have been able to sign a
8 contract without making a determination of
9 responsibility, a written determination as the
10 contracting officer. It basically states that the
11 contractor is technically and financially capable to
12 perform the work.

13 At that time, INSLAW had been performing on
14 these pilot contracts. In any event, the government,
15 meaning me, with the assistance of the audit staff made
16 the determination that INSLAW can perform the contract.

17 Q I recognize you already had to make a
18 determination that they could perform or you wouldn't
19 have executed the contract; but on the other hand,
20 INSLAW had to demonstrate to you up front going in that
21 they needed advanced payments or you wouldn't have given
22 it to them; is that right?

1 A And that they would not borrow additional
2 money so I could get it approved by the Assistant
3 Attorney General without misstating facts.

4 Q Now, going back to the letter, your letter of
5 December 6th, I believe it's Exhibit 13, did you prepare
6 that letter yourself, sir?

7 A I think that I did not formulate the center of
8 it, for sure. I did not write the language of the seven
9 points for sure. I may have written the beginning and
10 the end.

11 Q So that the substance of the letter --

12 A The technical description of the software and
13 documentation which we were requesting was put together
14 by the technical experts.

15 Q That came from the Executive Office of the
16 U.S. Attorneys, didn't it?

17 A Correct.

18 Q Do you know whether Mr. Brewer had any input
19 in the drafting of that letter, the draft that came to
20 you?

21 A He may have, but I would guess that it was
22 primarily Jack Rugh and Mike Snyder. Brewer may have

1 participated, but normally on this type of letter it
2 would be Rugh and/or Snyder.

3 Q But normally it would have been reviewed by
4 Mr. Brewer before it was sent over to you, wouldn't it?

5 MR. COOPER: Objection. Lack of foundation.
6 You haven't established that this witness would know
7 what documents Mr. Brewer reviewed and which ones he
8 didn't since he didn't work in Mr. Brewer's office.

9 BY MR. KELLOGG: (Resuming)

10 Q You can answer.

11 A I cannot say in which office I was when this
12 letter was put together or in which office I signed it,
13 and I cannot speculate as to whether Brewer did or did
14 not review it.

15 Q Do you recall any discussions with Mr. Brewer
16 about the language in this document?

17 A We must have at one point or another. He
18 became involved because of this letter. In other words,
19 this letter was undated. Apparently it was dated but
20 lost, and then Brewer had to send this transmittal over
21 again, and obviously he was familiar with this.

22 Q Yes.

1 In any event, at some point do you recall
2 getting any response to this December 6th letter which
3 eventually got to INSLAW sometime in early January?

4 A I recall getting a response, but I would like
5 to see it to refresh my memory as to what it said.

6 Q Do you recall who you got the response from?

7 A No.

8 (Whereupon, at 5:22 p.m., the taking of the
9 instant deposition ceased.)

10

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12

Signature of the witness

13 SUBSCRIBED AND SWORN TO before me this ----- day

14 of -----, 19-----.

15

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NOTARY PUBLIC

18 My commission expires: -----.

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CERTIFICATE OF REPORTER

SUSAN A. HARRIS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by ME; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Susan A. Harris
NOTARY PUBLIC

My Commission expires: 3-14-91

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

UNITED STATES BANKRUPTCY COURT

DISTRICT OF COLUMBIA

----- x
INSLAW, INC., :
Debtor, : Case No. 85-00070
INSLAW, INC., :
Plaintiff, : Adv. Proc. No. 86-0068
v. :
UNITED STATES OF AMERICA, :
and UNITED STATES DEPARTMENT :
OF JUSTICE, :
Defendants. :
----- x

DEPOSITION OF PETER VIDENIEKS(cont'd)

Washington, D. C.

June 18, 1987

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In Re: INSLAW, INC.,

Debtor,

and

INSLAW, INC.,

Plaintiff,

-VS-

UNITED STATES OF AMERICA and
the DEPARTMENT OF JUSTICE

Defendants.

Thursday, June 18, 1987

Washington, D.C.

Continued deposition of

PETER VIDENIEKS,

a witness in the above-entitled cause, was called for examination by counsel for the Debtor/Plaintiff, pursuant to notice, at the offices of McDermott, Will & Emery, before Craig L. Knowles, CSR, a Notary Public in and for the District of Columbia, commencing at 10:08 a.m., when were present on behalf of the respective parties:

A P P E A R A N C E S:

Kellogg, Williams & Lyons, by

PHILIP L. KELLOGG, ESQ.

JAMES L. LYONS, ESQ.

1275 K Street, Northwest

Washington, D.C. 20005

On behalf of the Debtor/Plaintiff.

United States Department of Justice, by

SANDRA P. SPOONER, ESQ.

Deputy Director

Commercial Litigation Branch

550 11th Street, Northwest

Room 1230

Washington, D.C. 20530

On behalf of the Defendants.

Also Present:

Mr. Hamilton.

* * *

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C-O-N-T-E-N-T-S

2

WITNESS

EXAMINATION BY COUNSEL FOR

3

DEBTOR/PLAINTIFF

4

Peter Videnieks

5

By Mr. Kellogg

196

6

E-X-H-I-B-I-T-S

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Videnieks Ex. No.

Identified

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No. 15

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No. 16

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No. 17

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No. 18

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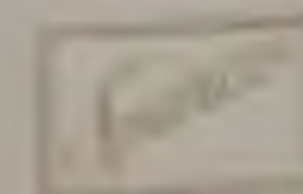
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5	No. 32	294
6	No. 33	296
7	No. 34	299
8	No. 35	315
9	No. 36	331
10	No. 37	337
11	No. 38	351
12	No. 39	363
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PROCEEDINGS

Whereupon,

PETER VIDENIEKS,

was called for examination by counsel for Debtor/Plaintiff, and having been first duly sworn by the notary public, was examined and testified upon his oath as follows:

EXAMINATION BY COUNSEL FOR DEBTOR/PLAINTIFF

BY MR. KELLOGG:

Q. Mr. Videnieks, this is a continuation of your deposition that we commenced yesterday and you are still under oath, sir.

When we finished yesterday, we were chronologically up to January 6 of 1983, when, as indicated on Exhibit 14, Mr. Brewer sent a copy of your December 6, 1982 letter to Mr. Gizzarelli, or to INSLAW, requesting the software documentation and so forth under article 30 of the contract.

You recall that testimony?

A. I recall that, yes.

MR. KELLOGG: I guess the next thing I want to do to do is mark this as 15.

(Deposition Exhibit 15 was marked for

identification.).

BY MR. KELLOGG:

Q. Mr. Videnieks, take a look at what is marked as 15, please. This appears to be a copy of a letter addressed to you, dated February 2, '83, from James Dimm, the acting project director at INSLAW, responding to your December 6, '82, request for the software documentation; is that correct?

A. Yes, sir.

Q. To your recollection was that the first written response you got to that request?

A. I don't recall any other requests at this point, this very moment. It may have been.

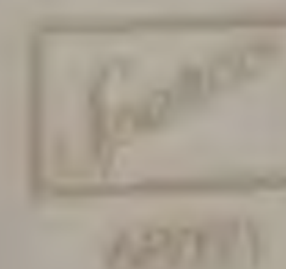
Q. You don't remember any other responses?

A. I remember an exchange of correspondence regarding this question. Whether this is the first correspondence from INSLAW, I can't remember.

Q. Do you recall getting any oral response prior to this time?

A. There may have been discussions. There may have been discussions, I don't recall anything specific.

MR. KELLOGG: Mark this next one as Exhibit 16,



1 please.

2 (Deposition Exhibit 16 was marked for
3 identification.)

4 BY MR. KELLOGG:

5 Q. Mr. Videnieks, take a look at what is marked as
6 Exhibit 16.

7 (Witness examines document.)

8 A. I will read it.

9 BY MR. KELLOGG:

10 Q. Just read it to yourself.

11 (Pause.)

12 A. I have read it.

13 BY MR. KELLOGG:

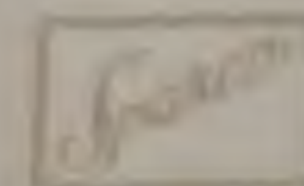
14 Q. This obviously is an internal INSLAW memorandum
15 to the files.

16 I assume you have never seen this before, have
17 you, sir?

18 A. No, sir.

19 Q. The subject of the memorandum is a meeting at
20 the Justice Department, which the memo indicates you
21 attended, together with others, on February 4, 1983.

22 Do you recall attending the meeting that is



1 described in the memorandum?

2 A. I recall another one better. I don't think
3 this is the same meeting, unless all the participants are
4 not listed here. I don't see a name from Arthur Young here,
5 which may have been omitted.

6 MR. KELLOGG: Off the record a second.

7 (Off-the-record discussion.)

8 BY MR. KELLOGG:

9 Q. You have indicated that you have a recollection
10 of a meeting that was attended by the people listed here,
11 but also by someone from Arthur Young, who is not listed in
12 the memo, is that it?

13 A. It may have been a separate meeting. I
14 recall -- I don't recall this specific meeting. At this
15 time, I don't recall it.

16 Q. But you don't have any reason to dispute, as
17 you sit here today, that you did attend such a meeting as
18 this, do you?

19 A. I have no reason to dispute it, no.

20 Q. In general terms, the memo indicates that
21 basically there were three issues that were addressed at
22 this meeting.

1 One was the issue of advance payments. Second,
2 the issue of bank borrowing. And the third, the question of
3 data rights and your request to get the software that I have
4 described earlier in your December 6 letter.

5 A. Wasn't there a fourth point there, too?

6 Q. Perhaps there was. That's all I --

7 A. Last point.

8 Q. You mean their assertion that you showed
9 hostility?

10 A. Yes, I think it was a point.

11 Q. It's a point of the memo, but obviously, that
12 is their characterization of it and I am not trying to get
13 into that at this point.

14 I was simply trying to summarize what the memo
15 indicated the points were that were discussed at the
16 meeting.

17 A. I understand.

18 Q. And in general terms, those were the three
19 broad issues that appear to have been discussed at the
20 meeting, according to the memo; isn't that right?

21 A. Yes, sir.

22 Q. Do you have a recollection after you sent out

1 your December 6, 1982, letter requesting the source code and
2 the underlying data processing materials, do you have a
3 recollection of attending a meeting like this with these
4 various people who are identified here being present at
5 which these questions were discussed?

6 A. It appears I attended a meeting like this. I
7 don't dispute the fact that I may have attended that
8 meeting. I don't recall it specifically, as I stated
9 before.

10 Q. I understand you didn't recall, you don't
11 recall this particular date. But my question to you is, do
12 you have any recollection of ever attending a meeting like
13 this at which these issues were discussed involving these
14 people, whether it was on this date or some other date?

15 A. Like I stated before, another meeting jumps in
16 my memory much more clearly than this one, which as I said
17 before, I don't remember specifically. I am not denying it
18 took place.

19 Q. All right. When you say another meeting, are
20 you pretty clear in your mind that it was on some other time
21 besides February 4 of '83?

22 A. I cannot remember that far back as to specific

1 dates.

2 Q. Tell me what you remember about the meeting
3 that you testified that you do recall more clearly.

4 A. That meeting was in the Andretta room in the
5 Department of Justice. It was chaired by Bill Snider, the
6 administrative counsel, and also one of the attendees was
7 from the firm Arthur Young. I don't see those individuals
8 listed here.

9 That meeting, I think, was rather tense. Bill
10 Hamilton was there, and that stands out in my memory. This
11 one does not.

12 Q. At least Mr. Hamilton's recollection of that
13 meeting, the Andretta room meeting was that it took place
14 some time in May of '83. And I believe his recollection is
15 that that dealt primarily with the computer center cost
16 issue.

17 A. That is not my recollection. I cannot -- I
18 don't think I have any notes with dates on it, but I seem to
19 remember taking a vacation in the month of February, or
20 early spring, going down to South Carolina, after the
21 meeting I am referring to.

22 Q. All right. Well, tell me what your

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1 recollection was of that meeting. The one you are talking
2 about took place in the Andretta room in the department, it
3 was chaired by Bill Snider?

4 A. Bill Snider, Kamal Rahal was there, I was
5 there, Hamilton, the man from Arthur Young, Harvey may have
6 been there.

7 Q. Mr. Sherzer?

8 A. Right, that is about all I remember with
9 respect to the attendees. The discussions I think centered
10 around -- could have been the same issue as presented in the
11 memo that you have here as Exhibit 16.

12 Q. Your recollection, such as it is, is that this
13 meeting would have been somewhere in early spring, earlier
14 than May?

15 A. That is my recollection, because I remember
16 coming back from that vacation, there was a huge snow storm
17 that hit Washington and I had to shovel the parking spot for
18 my car.

19 Q. In any event, would it be fair to say that
20 these three questions that I described, that is, the advance
21 payment issue, the bank borrowing, INSLAW bank borrowing,
22 and the software, your request to get the software data,

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1 those three issues were all inter-related, is that a fair
2 statement?

3 A. A fair statement would be that INSLAW's
4 financial condition, bad financial condition as assessed and
5 communicated to me by the audit staff and the data request,
6 are related.

7 And it was made to protect the government's
8 interests in the event INSLAW's financial condition
9 worsened.

10 Q. I am not sure that is any different from what I
11 asked, but to be precise, I understood you to testify
12 yesterday that when you first learned in the fall of '82
13 that INSLAW had made a new line of credit without notifying
14 you under the contract, as they were required to do, that
15 you felt that that was a violation of the advance payment
16 clause?

17 A. Yes, sir.

18 Q. Isn't that right?

19 A. Yes, sir.

20 Q. And that you at least considered at that point
21 giving a notice to INSLAW that they were in violation of the
22 contract and that there is a possibility that you might

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1 withhold or stop making the advance payments?

2 A. I gave them a letter of that nature.

3 Q. All right. So that certainly, the bank
4 borrowing or the new line of credit and the advance payments
5 issue, those two were certainly related to each other,
6 weren't they?

7 A. The advance payments article in the contract
8 prohibits unauthorized new liabilities to be incurred by the
9 contractor.

10 What you are saying basically is, you are
11 bringing out a subpoint from the provision in the contract.

12 Q. I am just asking you, aren't there two, aren't
13 the two related.

14 A. I answered you.

15 Q. And they are.

16 A. I answered you.

17 Q. The answer is they are related.

18 MS. SPOONER: The question has been asked and
19 answered.

20 MR. KELLOGG: I disagree with you. I am going
21 to ask it again, because I don't think it was answered. I
22 it's a very simple thing.

1 I don't think it involves any concession on
2 your part, either.

3 BY MR. KELLOGG:

4 Q. The contract mandates that the contractor,
5 INSLAW, advise you of any new bank borrowings or any change
6 in their credit situation; isn't that right?

7 A. Obtain my approval.

8 Q. Notify you and obtain your approval. And when
9 you found out that they had gotten a new line of credit
10 without notifying you and getting your approval, that in
11 turn was a violation of the advance payments clause; isn't
12 that right, or it entitled you, if you wanted to --

13 A. It was a violation of one of the covenants
14 within that article.

15 Q. And as a consequence of such a violation, you
16 had the right to stop the advance payments; isn't that
17 right?

18 A. Right, and I did not do that.

19 Q. I understand that.

20 A. No.

21 Q. But you wrote them a letter saying you were
22 considering doing that?

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1 A. Yes, sir.

2 Q. So that the two issues, that is, the fact of
3 the new bank borrowing, triggered that letter about the
4 possibility of eliminating the advance payments; isn't that
5 right?

6 A. Right.

7 Q. All right so the two are related.

8 A. Because in order for me to put this unusual
9 provision in a cost reimbursement contract, I had to get the
10 approval from the assistant attorney general for
11 administration to include that language in the contract.

12 Q. Yes, I understand.

13 A. In order to get that approval I had to make
14 certain statements and sign my name as to the fact that the
15 contractor has no other source of money, that he is unable
16 to borrow money.

17 Q. I understand.

18 A. Which appears was not the case.

19 Q. I understand. Now, the request for the
20 software source codes and so on that was contained in your
21 December 6, '82, letter, that request was also triggered
22 because of a concern over what people in the executive

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1 office and yourself thought was a deteriorating financial
2 condition of INSLAW at the time; isn't that right?

3 A. The memorandum from the audit staff, prepared
4 by Bob Whiteley, I think, basically stated to my best
5 recollection that INSLAW's condition is bad, aside from the
6 advance payments issue. That they are in a bad financial
7 condition.

8 Q. But the fact that they had gone out and gotten
9 an additional credit line and maybe borrowed on it since the
10 contract started --

11 A. That may have triggered my contacting Whiteley
12 or it may have triggered the auditors looking into INSLAW.
13 However, it's their task to do that, anyway, on a continuous
14 basis as a cognizant audit activity.

15 So I am not sure as to what triggered
16 Whiteley's taking a closer look at INSLAW. It could have
17 been my request.

18 Q. In any event, you did call that to Whiteley's
19 attention and ask him --

20 A. I may have, I specifically don't remember it,
21 but I don't deny that I may have.

22 Q. At this February 4, 1983 meeting, it's Mr.

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1 Hamilton's best recollection, of course, he could be wrong
2 on the date, but his best recollection is that at that
3 meeting during the discussion of the data rights question,
4 that Mr. Hamilton said to Mr. Snider, look --

5 A. Bill or Mike?

6 Q. Bill Snider. Mr. Hamilton's recollection is
7 that he said to Mr. Bill Snider, look, we just want to be
8 able to protect our proprietary rights. We will give the
9 government the rights to our privately funded even
10 answerments, just as long as you can give us a modification
11 to the contract or an agreement that protects our right to
12 be able to own it and sell it freely to others.

13 And that Mr. Snider responded to that by
14 saying, Bill, that's not the way the government does
15 business. If we want your privately funded enhancements, we
16 will pay you for it.

17 My question to you is, do you have any
18 recollection of such a conversation in your presence, either
19 at this February 4, 1983, meeting, or any other?

20 A. Between Snider and Hamilton?

21 Q. Yes, sir.

22 A. I don't have a specific recollection. I don't

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1 deny it took place.

2 Q. It may have taken place?

3 A. It may have taken place.

4 Q. Do you mean by that it could have taken place
5 in a meeting that you attended?

6 A. In my presence, in my presence.

7 Q. All right. Is that inconsistent with the
8 positions that Mr. Snider was taking, that you do remember
9 during that period of time on this issue?

10 A. I cannot right now, on the spot, analyze Bill
11 Snider's various positions on the question at this point. I
12 don't remember whether he changed his position at all.

13 Q. Do you ever remember him taking a position
14 similar to rewhat is reflected in that statement I just set
15 forth, namely, look, if we want your privately funded
16 enhancements, we will pay you for them?

17 A. I don't know what bill Snider said, like I
18 said, I don't remember. He may have said it in my presence,
19 but he's not the contracting officer. He may have had a
20 conversation at the end of the table, he may have had it
21 right in front of me. Modification 12 controls.

22 Q. I understand, of course, it does and I am not

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1 disputing that. I am just asking you, I presume in the
2 course of all of this that you at some point had some
3 conversations with Mr. Snider, Mr. William Snider, about
4 this data rights issue; isn't that right?

5 A. Yes.

6 Q. In those conversations, or in others that you
7 were present when he made statements --

8 A. You are not talking about this specific meeting
9 now?

10 Q. Yes, not this specific meeting.

11 A. Okay.

12 Q. But any others. Did Mr. Snider ever make a
13 statement in your presence like this one that I am talking
14 about, namely, taking a position, well, look, if we want the
15 privately funded enhancements, we will pay for them?

16 MS. SPOONER: I am going to object on the
17 ground that that is protected by the attorney-client
18 privilege and instruct the witness not to answer.

19 MR. KELLOGG: All right.

20 BY MR. KELLOGG:

21 Q. Do you ever recall him making such a statement
22 or a statement similar to that in any meeting that you

Sparco

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1 attended with him, Mr. William Snider, in the presence of
2 anybody from INSLAW?

3 A. I don't specifically recall that.

4 Q. Mr. William Snider, in his deposition
5 testimony, has testified that a time or two that he
6 counseled you regarding your abrasiveness in dealing with
7 the contractor. Is that true?

8 MS. SPOONER: Objection. The question is
9 confusing.

10 Are you asking this witness if Mr. Snider
11 testified to that, or if Mr. Snider did in fact counsel him?

12 BY MR. KELLOGG:

13 Q. My question is, he testified to it and my
14 question is, is it true?

15 MS. SPOONER: Is what true?

16 MR. KELLOGG: I take it back, the objection is
17 well founded.

18 BY MR. KELLOGG:

19 Q. Is it true, Mr. Videnieks, that Mr. William
20 Snider, at some point during these lengthy disputes with
21 INSLAW, that Mr. Snider counseled you about your abrasive
22 attitude towards the INSLAW people?

Spencer

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1 A. I don't recollect that. Snider was not in a
2 line of command with respect to me. I did not report to
3 him. That's basically it.

4 Q. I understand he wasn't in the chain of command
5 above you. My question is, let me put it to you this way.
6 You have no recollection of Mr. Snider ever telling you in
7 words or substance that he felt that you were being a little
8 abrasive in dealing with these issues and with the INSLAW
9 people?

10 A. I -- no, I do recall, though, that Mr. Snider
11 said basically to the effect, "Be careful with your
12 correspondence with INSLAW and coordinate it with my
13 office."

14 Q. What did you think he meant by being careful
15 with your correspondence?

16 A. I imagine -- well, I would have to speculate
17 what he meant.

18 Q. He was talking to you. What do you think he
19 meant?

20 A. Things by that time may have gotten involved to
21 legalistic, in the sense wherein involvement of an attorney
22 in Snider's opinion was becoming important.

Spencer

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(Pause.)

MR. KELLOGG: Mark this as Exhibit 17, please.

(Deposition Exhibit 17 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 17, please. That appears to be a copy of a letter to you from Harvey Sherzer, dated February 10, 1983, in which he addresses some questions that came up in the February 4, 1983 meeting.

A. Yes. You notice this name on the last page, John Hozik. He is a partner from Arthur Young. That is the individual I was referring to earlier.

And his name does appear in this internal INSLAW memo talking about February 4. So it may be -- I may be remembering the same meeting.

Q. It may be that the meeting you were thinking of was on February 4, if this Arthur Young fellow was present.

A. Instead of May.

Q. Yes, I understand. In any event, I take it you received the original of this Exhibit 17, sir?

A. Yes, sir.

Q. There is all kind of correspondence going back

Spence

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1 and forth here, but let me just ask you, on April 11, 1983,
2 I believe it is, you and INSLAW, Mr. Hamilton, executed
3 modification number 12 to the contract which addressed this
4 data rights issue; is that correct?

5 A. That's correct.

6 Q. And that that modification was essentially an
7 attempt by the parties, the government and INSLAW, to try to
8 resolve your concern for getting the software data and their
9 concern about the data rights in the privately funded
10 enhancements; is that correct?

11 A. Yes, sir.

12 MR. KELLOGG: I am going to skip several
13 documents here and go to a document, a letter of yours of
14 March 8, 1983, if you would mark that as Exhibit 18.

15 (Deposition Exhibit 18 was marked for
16 identification.)

17 BY MR. KELLOGG:

18 Q. If you will take a look at that, it's a letter
19 from you to Mr. Sherzer, or to his firm, dated March 8 of
20 '83.

21 (Witness examines document.)

22 A. Okay, I glanced at it.

Spencer

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1 BY MR. KELLOGG:

2 Q. Is that a copy of an original letter that you
3 sent to Mr. Sherzer?

4 A. Yes.

5 Q. On March 8, 1983?

6 A. Yes.

7 Q. I take it that this is a response to the
8 earlier letter of Mr. Sherzer's that was marked as Exhibit
9 17, together with some additional --

10 A. That's not the case.

11 Q. No?

12 A. It appears to be response to a March 3 letter.
13 This is dated February 10.

14 MR. KELLOGG: I take it back.

15 Mark this, please, as Exhibit 19.

16 (Deposition Exhibit 19 was marked for
17 identificaton.)

18 MS. SPOONER: Are you talking about now Mr.
19 Sherzer's letter of March 3?

20 MR. KELLOGG: Yes.

21 BY MR. KELLOGG:

22 Q. If you will look at 19 and tell me whether or

Spencer

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1 not that is a copy of the letter from Mr. Sherzer to you,
2 dated March 3, the original of which you received.
3

(Witness examines document.)

4 A. I have read it.

5 BY MR. KELLOGG:

6 Q. I take it that Exhibit 19 is a copy of the
7 letter that you received, a copy of the letter that you
8 received from Mr. Sherzer?

9 A. Yes, sir.

10 Q. What we had marked as Exhibit 18, your letter
11 to Mr. Sherzer of March 8, 1983, that is your reply to this
12 Exhibit 19, is that right?

13 A. Right.

14 Q. Turn to the second page of that letter, Exhibit
15 18, your letter, the paragraph starting "Finally, I
16 understand that you told Mr. Snider on March 4 that
17 government representatives were aware of the enhancements to
18 the data bases," and you go on to indicate that the first
19 time this was raised was at the, well, that nothing was said
20 by INSLAW representatives to challenge the statement by
21 government representatives that the first time this issue
22 was raised was at the February 4 meeting.

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1 After you wrote this letter up until today, did
2 you ever come into any knowledge that INSLAW had raised the
3 fact of privately funded enhancements to the PROMIS software
4 before February 4 of '83?

5 A. I can't remember that far back with respect to
6 dates.

7 Q. I call your attention to your testimony
8 yesterday in which I examined you about the, I examined you
9 yesterday about the exchange of correspondence between
10 yourself and Mr. Merrill, in late '81 and early '82, before
11 the contract was even negotiated, in which questions --

12 A. They should have been more clear then, and my
13 mind is oriented towards contract administration, not
14 towards events preceding contract award.

15 Frequently, you use long introductions that I
16 seem to be missing at this point.

17 Q. I guess my point is this. After looking at
18 what we marked yesterday as Exhibits 2 and 3, 2 being your
19 letter to INSLAW asking for responses to the questions set
20 forth in the attached memo, and 3 being INSLAW's responses
21 to those questions, do you now realize that INSLAW had
22 raised this issue before the contract began?

Spence

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1 A. Yes. Technically, being technically correct,
2 during the clarification process in the competitive mode
3 prior to contract award we asked INSLAW to clarify several
4 areas by memorandum, by letter. One of those points is the
5 one we discussed yesterday.

6 Q. They did mention in that clarification that
7 there were privately funded enhancements in the PROMIS
8 software; isn't that right?

9 A. At that point that was their position.

10 Q. So that it would be incorrect, would it not, to
11 say, as you said in your March 8, 1983, letter, Exhibit 18,
12 that the first time INSLAW ever raised this matter was at
13 the February 4, 1983, meeting?

14 MS. SPOONER: Objection, that is not what the
15 letter says.

16 BY MR. KELLOGG:

17 Q. Well, technically I guess you may be right.
18 But the letter says nothing was said by INSLAW
19 representatives in this regard at the February 4 meeting in
20 response to the statement by government representatives that
21 this was the first time this issue was raised.

22 I guess counsel is technically correct that

Spartan

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1 it's not the statement in the letter, Exhibit 18, that this
2 was the first time it was raised.

3 BY MR. KELLOGG:

4 Q. But somebody from the government asserted at
5 the February 4 meeting that that was the first time INSLAW
6 had ever raised the privately funded enhancements issue;
7 isn't that right?

8 A. I don't know what somebody did.

9 Q. Well, you said in your letter of March 8, 1983,
10 you made a reference to the fact that someone, some
11 government representative made a statement at the February 4
12 meeting that that was the first time INSLAW had raised the
13 issue; didn't you say that?

14 A. Do you want me to read the sentence to you?

15 Q. No, I can read the sentence.

16 A. I don't understand your question. It's very
17 vague, very difficult to understand.

18 Q. Well, I think you understand it very well.

19 A. No, I don't.

20 MS. SPOONER: Would you like to repeat it, Mr.
21 Kellogg?

22 MR. KELLOGG: Yes, I will, one more time.

1 BY MR. KELLOGG:

2 Q. In your letter of March 8, 1983, Exhibit 18,
3 you recite the fact, or you recite the assertion that
4 nothing was said by INSLAW representatives about privately
5 funded enhancements at the February 4, 1983, meeting in
6 response to the statement by government representatives that
7 this was the first time the issue was raised.

8 A. Under the contract.

9 Q. All right. Did you, you intended, then, when
10 you wrote this letter to add that caveat, that it was the
11 first time it had been raised under the contract?

12 A. I am administering the contract, the RFP is
13 dead. We are talking about the contract.

14 Q. So you didn't mean to say that nobody had ever
15 raised it at any time, just they hadn't raised it during the
16 contract before February 4?

17 A. Right.

18 Q. Is that correct?

19 A. Right.

20 MR. KELLOGG: If you will mark that as Exhibit
21 20. I am skipping a few, here. It's March 18, Mr.
22 Videnieks to Mr. Sherzer.

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(Deposition Exhibit 20 was marked for identification.)

BY MR. KELLOGG:

Q. Going back one second, Mr. Videnieks, to the March 8, '83 letter, Exhibit 18, your letter to Mr. Sherzer of March 8.

A. All right.

Q. Did you draft this letter, sir?

A. I participated in drafting this letter with bill Snider. Bill Snider had a significant input in this letter.

Q. All right. Did anybody else have any significant input in drafting it?

A. Not to my recollection. That does not mean that they may not have had.

Q. Turning to Exhibit 20, this appears to be a copy of a letter from you to Mr. Sherzer, dated March 18. Excuse me. I believe it's dated March 18, 1983. It appears to have an erroneous received stamp from the law firm up at the top indicating '82.

MS. SPOONER: I don't see that on my copy. I wonder if I have the right document.

1 MR. KELLOGG: That one.

2 MS. SPOONER: I thought you had said it was a
3 document dated March 8.

4 MR. KELLOGG: No, 18. I am sorry, if I said 8.
5 I am moving now, there is a March 8, which is Exhibit 18.

6 BY MR. KELLOGG:

7 Q. Do you have Exhibit 20 there, Mr. Videnieks?

8 A. Yes, sir, but I don't have the letter to which
9 it refers, unless I have misplaced it, the March 9 letter
10 that this letter seems to be responding to.

11 MR. KELLOGG: All right, I will put that in,
12 and I am sorry.

13 Let's mark this one as Exhibit 21.

14 (Deposition Exhibit 21 was marked for
15 identification.)

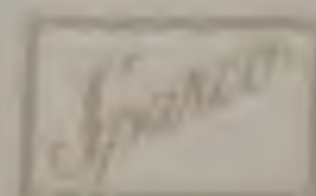
16 MS. SPOONER: This is a letter from Mr. Sherzer
17 dated March 9, 1983?

18 MR. KELLOGG: Yes, that's correct.

19 MS. SPOONER: Thank you.

20 BY MR. KELLOGG:

21 Q. If you will look at 21, that appears to be a
22 copy of a letter dated March 9, 1983, from Mr. Sherzer to



1 you and which, I believe, Exhibit 20 was your response.

2 A. That appears to be the case.

3 Q. All right.

4 A. I read the summary.

5 Q. All right. Turn, if you will, to Exhibit 20,
6 which is your response, dated March 18, 1983.

7 (Witness examines document.)

8 A. All right.

9 BY MR. KELLOGG:

10 Q. I take it Exhibit 20 is a copy of your response
11 to Mr. Sherzer's March 9, 1983, letter?

12 A. Yes, sir.

13 Q. Your letter, Exhibit 20, was dated March 18,
14 1983?

15 A. Right.

16 Q. Mr. Videnieks, you indicate in the first
17 paragraph of this letter that the purpose of the letter is
18 to correct certain statements that Mr. Sherzer had made in
19 his March 9 letter and to offer an alternative to the escrow
20 agreement currently under consideration; is that correct?

21 A. That's what the introduction seems to say, yes.

22 Q. Prior to this time, am I correct to believe

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1 that there had been under consideration the possibility of
2 working out an escrow agreement between the government and
3 INSLAW which essentially would have provided that an
4 original set of the data, the software data, would be placed
5 in escrow with a bank so that if anything happened to
6 INSLAW, it went bankrupt or went out of business or
7 whatever, the government would be able to get at the
8 software and protect itself in sum and substance; such a
9 thing was under consideration prior to this letter, wasn't
10 it?

11 A. I think generally you are correct. In order to
12 completely agree with you I would have to scan that
13 agreement.

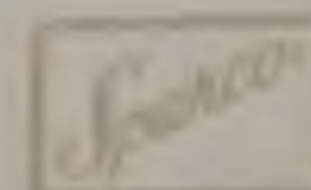
14 Q. I am not trying to --

15 A. I can't recall now exactly what was in that
16 escrow agreement. I did not participate in the drafting of
17 it.

18 Q. All right. I am not trying to recite in detail
19 what the agreement provided.

20 A. No.

21 Q. But essentially it was some kind of an escrow
22 agreement involving the software data and source codes and



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1 so forth, correct?

2 A. I think so.

3 Q. All right. And this letter here, Exhibit 20,
4 you, among other things, are offering an alternative.

5 Instead of the escrow agreement, another alternative to try
6 to resolve the issue; is that correct?

7 A. Right. It was my position as contracting
8 officer not to have extraneous documents floating around. I
9 wanted all matters to be included, all points -- I wanted
10 the contract, itself, to cover all issues under it and have
11 no extraneous documents floating around.

12 Q. In your letter you talk about an seek to
13 correct from your perspective various things that Mr.
14 Sherzer has said in his letter of March 9. And --

15 MR. KELLOGG: Strike that.

16 BY MR. KELLOGG:

17 Q. Who drafted this March 18, 1983, letter that is
18 Exhibit 20?

19 A. I believe it was Bill Snider.

20 Q. In its entirety?

21 A. I think so.

22 Q. All right.

Spencer

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1 A. I don't specifically recall, but it appears, I
2 mean, to the best of my knowledge, yes.

3 Q. In any event, you don't have any recollection
4 of having any substantial input into the drafting of this
5 letter?

6 A. Let me look at it again.

7 (Pause.)

8 A. I think Bill Snider drafted this.

9 BY MR. KELLOGG:

10 Q. Before you sent that out, do you recall having
11 any discussions about the letter?

12 A. I don't specifically recall any discussions.
13 That does not mean they were not any.

14 Q. Are you talking about with Mr. Snider?

15 A. With Mr. Snider.

16 Q. Before this letter was drafted do you recall
17 any discussions that you participated in with Mr. Brewer and
18 Mr. Rugh about making this offer that is contained in this
19 letter?

20 A. Yes, I do recall such discussions. In general,
21 I think we all participated to some extent in the drafting
22 of language which eventually ended up as being modification

Spencer

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1 number 12.

2 I did not participate in drafting the escrow,
3 proposed escrow agreement. There was all -- those
4 individuals who you enumerated did communicate about the
5 subject.

6 Q. In your presence?

7 A. Either on the telephone or in person.

8 Q. All right. What, if any, discussions do you
9 remember having with Mr. Brewer about whether it would be
10 appropriate to make the offer that is contained in your
11 March 18 letter, Exhibit 20?

12 A. Which specific paragraph are you referring to
13 as the offer? I would like to look at it.

14 Q. Sure. It's the part beginning, it would be the
15 next to the last paragraph on page 2 that starts with the
16 words "In lieu of the proposed escrow agreement which the
17 department currently has under review, the government
18 offers..."

19 A. Let me read it.

20 Q. That language to the end of the letter.

21 (Witness examines document.)

22 A. Okay, I read it.

65021

1 BY MR. KELLOGG:

2 Q. Do you recall any conversations that you had
3 with Mr. Brewer about whether to make this offer that is
4 reflected in that part of your March 18 letter?

5 A. About whether to make that offer?

6 Q. Yes, about whether to make that offer.

7 A. I don't specifically recall talking to this --
8 to any individual specifically. I think during that time
9 there was a continuous discussion on the phone or in person
10 as a group or individually.

11 One, I don't recall a specific conversation
12 with Brewer on that subject. And that's basically it.

13 Q. Do you recall a specific conversation on that
14 same subject with Mr. Rugh?

15 A. I recall discussing the language which -- see,
16 my attention is focused on the -- what ended up as being
17 modification number 12. These preliminary documents don't
18 stand out in my memory that well.

19 Q. All right, your answer, then, is you don't
20 recall discussing this offer with Mr. Rugh?

21 A. Not that specific offer. I recall discussing
22 the whole issue of data requirements and INSLAW's claim to

1 data rights.

2 Q. Tell me what you do recall about your
3 discussions with Mr. Rugh about the data rights issue.

4 A. As distinguished from data requirements.

5 Q. Yes.

6 A. Nothing specific. In general, I think the
7 discussion could have dealt with INSLAW's claim with respect
8 to proprietary rights and then requesting -- maybe that came
9 later, requesting INSLAW to substantiate that claim.

10 Q. This would be after the execution of mod 12,
11 submitting identification of the claimed privately funded
12 enhancements and a method for showing that to you?

13 A. Right.

14 Q. And so on?

15 A. Yes, basically what I remember discussing with
16 Rugh would be methodology --

17 Q. In all likelihood that would have come after --

18 A. Yes, basically that would have come after this.

19 Q. Do you recall any discussions with Mr. Brewer
20 about this discussion of data rights and how to resolve it
21 and what could be done about it and so on?

22 A. In general, I remember individual and group

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1 discussions with all concerned individuals about that topic,
2 yes.

3 Q. What, if anything, do you remember Mr. Brewer
4 saying on this subject?

5 A. Nothing specific.

6 Q. Do you have any recollection, just generally,
7 of what the thrust was of the discussions?

8 Was there any consensus as to how to deal with
9 the question in those discussions?

10 A. I think probably, as my notes indicate,
11 discussions dealt with requesting INSLAW to provide proof of
12 their claim that there are indeed proprietary enhancements,
13 what form that proof should take.

14 Related to that were discussions about INSLAW's
15 bad financial condition, in general, apart from the advance
16 payments issue, all related things.

17 Q. Do you recall Mr. Brewer ever taking the
18 position that INSLAW should be able to document or should be
19 asked to document these claims that they make of privately
20 funded enhancements?

21 A. Yes, and I think INSLAW offered to do that, if
22 I remember correctly.

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1 Q. All right. Going back to Exhibit 20, your
2 letter of March 18 and the part of it that relates to the
3 government's offer.

4 This offer --

5 MR. KELLOGG: Strike that.

6 BY MR. KELLOGG:

7 Q. Was this offer ever accepted by INSLAW?

8 A. Are we still back on the escrow agreement?

9 Q. No, sir, we are back on Exhibit 20, your letter
10 of March 18. When I say this offer, I am talking about the
11 language starting, "In lieu of the proposed escrow
12 agreement, the government offers ..."

13 (Witness examines document.)

14 A. I think modification number 12 contains similar
15 language.

16 Q. In fact, I mean modification number 12, signed
17 by both yourself and Mr. Hamilton, reflects INSLAW's
18 acceptance of the offer made in this March 18 letter; isn't
19 that right?

20 A. The letter is extraneous, I don't think it is
21 referred to in the contract modification. The contract
22 modification stands by itself.

Custom

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1 The parties agreed only to those things which
2 are spelled out in the modification. Extraneous letters, if
3 they are not referred to in the modification, are not part
4 of the modification.

5 Q. But the fact of the matter is that --

6 A. This is a document prelim flare and apart of
7 negotiations preceding to that modification 12 document.
8 That is all I have to say on that, can say at this point.

9 Q. Well, let me ask you this. You say that you
10 believe modification 12 contains similar language.

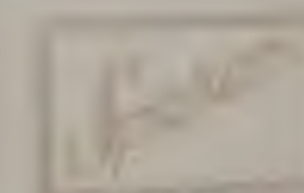
11 Would you dispute that it was on the basis of
12 this offer contained in your March 18 letter that I have
13 described earlier that you and INSLAW executed the mod 12
14 agreement?

15 A. Of course.

16 Q. All right.

17 A. No, let me finish, sir. Of course, this is
18 only one document, and there were numerous phone
19 conversations, conversations in person which formed the
20 basis of modification 12. This is one document which is in
21 the background.

22 Q. One of several?



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1 A. One of several.

2 Q. All right. Now, going up to the top of page 2
3 of Exhibit 20, where you say, "Therefore, the data rights
4 clauses of several different contracts between INSLAW and
5 the government govern the rights of the parties. In order
6 to determine whether the government has any rights in any
7 private enhancements, it is necessary to know precisely what
8 the private enhancements are and the requirements of the
9 contract."

10 Is it your understanding that what you --

11 MR. KELLOGG: Strike that.

12 BY MR. KELLOGG:

13 Q. Is it fair to read that to mean, I will put it
14 this way. Is it fair to read that language to mean that if
15 INSLAW could demonstrate that its software contained some
16 privately funded enhancements, that is, not funded by any
17 government contract, and if those enhancements were not
18 necessary to fulfill the requirements of this contract, then
19 they would, well, then that the government would not have
20 any rights in those enhancements?

21 MS. SPOONER: May I have that question repeated
22 please?

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(The reporter read as directed.)

MS. SPOONER: Thank you.

BY MR. KELLOGG:

Q. I know it's a complicated question.

A. It is a complicated question. The answer is, I don't necessarily agree with you, to the extent that those enhancements were incorporated to such an extent into the required -- item required under the contract removal of those enhancements would be disruptive.

Q. All right.

A. In other words, the contractor cannot incorporate subunits into an item and, thus, at a later time we are to the point where the government has, to construct its programs, to achieve its mission.

Q. Again, is it fair from what you are saying to conclude that if INSLAW could demonstrate that its software contained privately funded enhancements which were not required to do the tasks called for by this contract, and if they could be taken out without disrupting the government's activities under the contract, then INSLAW would have the right, and not the government, to those enhancements; is that fair to say?

1 MS. SPOONER: May I have that question reread,
2 please?

3 (The reporter read as directed.)

4 MS. SPOONER: I am going to object to that
5 question on the ground that it calls for a legal conclusion,
6 and Mr. Videnieks is not a lawyer.

7 If you are asking for his opinion as a
8 contracting officer in this case, then I have no objection.

9 MR. KELLOGG: Clearly, I am asking the latter,
10 as you say, his opinion as the contracting officer. And I
11 recognize he is not a lawyer.

12 A. Sure, and also the questions do sound a bit
13 hypothetical and generally --

14 BY MR. KELLOGG:

15 Q. Just for the record I am asking it to get
16 clear --

17 A. What do you mean by right?

18 MS. SPOONER: Mr. Kellogg, may I just say
19 something?

20 Government contracting is, as I am sure you
21 know, a very precise art and science, and Mr. Videnieks has
22 been trained to deal in those very sort of precise and, some



1 people say, picky details.

2 I believe that some of your questions are very
3 vague. I have not objected to them because I believe that
4 Mr. Videnieks is entitled and is quite capable of doing his
5 very best to answer those questions.

6 But I think it's only fair that you accept the
7 fact that he is going to ask you to clarify your questions,
8 because they are very imprecise.

9 MR. KELLOGG: I will try to clarify them to
10 whatever extent is necessary so that Mr. Videnieks has an
11 understanding.

12 It's not my purpose to try to trap him into
13 anything. He wrote the letter, or he sent it out under his
14 name; and it bears on the issues.

15 And I am simply trying to find out what, in his
16 mind, the logical consequences, if you will, were from what
17 he has said in here.

18 BY MR. KELLOGG:

19 Q. I guess in response to my last question you are
20 saying what do I mean by the right?

21 A. The word right, yes, in both versions of your
22 question.

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1 Q. All right. What I mean by it is in the
2 hypothet that I gave you in my last question, in that case
3 do I understand you to mean that INSLAW would have the right
4 to the privately funded enhancements in that case, and that
5 the government would not have any right to use it if INSLAW
6 asked them to give it back to them?

7 A. That we would not have any rights to use them?

8 Q. Yes.

9 A. I would have -- you are asking for my opinion.

10 Q. Yes.

11 A. I would like to research that point. I am not
12 sure that that is true. I would have to think about it for
13 some time, give you a good answer on that.

14 Q. Would you have any reason to dispute, again, in
15 that hypothet, that INSLAW would own those privately funded
16 enhancements?

17 MS. SPOONER: Would you repeat again, Mr.
18 Kellogg, the hypothetical?

19 MR. KELLOGG: Yes. Simply put, as simply as I
20 can, the hypothetical is, if INSLAW could identify
21 enhancements to its software which it had provided under
22 this contract, which enhancements were privately funded and

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1 which enhancements were not necessary to do any of the tasks
2 that are required to be done under the contract, and which
3 enhancements could be taken out without disrupting the
4 government's conduct of its affairs under the contract, in
5 that case, in that hypothetical, in your view wouldn't
6 INSLAW own those enhancements, those privately funded
7 enhancements?

8 A. I am not sure they would. I am not a lawyer on
9 the subject. You are basically saying there were
10 voluntarily deliberous items beyond what is required by the
11 contract. Is it a gift? I don't know.

12 BY MR. KELLOGG:

13 Q. All right.

14 A. I am not a lawyer. We should do legal research
15 to decide what category that situation falls into.

16 Q. You have answered my question.

17 Now, turning to the offer you made in the later
18 part of the letter, and here again, my purpose is simply to
19 make sure that I understand at least what your meaning or
20 what you thought your meaning was in writing this letter.
21 Why don't you just tell me as you sit there, what is your
22 lay person's understanding of the offer as it was made?

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1 What was the government offering to do?

2 A. You are referring again to the second, to the
3 page 2, next to last paragraph?

4 Q. Yes, sir. Let me say by way of introduction to
5 that or predicate to that, I know the written language of
6 the letter governs and I am not trying to get you to change
7 it.

8 A. Not of the letter.

9 Q. Pardon?

10 A. The modification governs.

11 Q. The written letter is the final word as to what
12 the written letter says.

13 A. Yes, sir.

14 Q. That is all I mean. I am not trying to get you
15 to change that.

16 A. Fine.

17 Q. I am just asking you, as you sit there today,
18 you tell me what you recall as to what is the gist of the
19 offer that you were making there.

20 A. The government agrees it will not disseminate
21 or disclose PROMIS software requested in our letter of
22 December 6 beyond the EOUSA headquarters office and the 94

1 U.S. attorneys offices. And this offer was made upon the
2 condition that we receive -- that INSLAW satisfies our
3 request under the data requirements clause to our
4 satisfaction.

5 Q. Well, the offer talks about a resolution of the
6 data rights issue. What was your intention there as to how
7 the data rights issue would be resolved in terms of this
8 offer?

9 A. INSLAW's delivery of the data requested under
10 article 30, I believe it was, data requirements, in a form
11 acceptable to the government.

12 Q. Yes, but if I understand both the letter and
13 what you are saying correctly, there are two parts to the
14 offer.

15 The first thing you want is, you want INSLAW to
16 give you all of the software data --

17 A. That is what we want. That was the primary
18 concern.

19 Q. For the government, sure.

20 A. Sure.

21 Q. You wanted to get that delivered to you. And
22 if they did that in order to resolve this issue, you are

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1 saying in effect that you will agree not to disseminate that
2 data that they do give you under article 30?

3 A. Yes, sir.

4 Q. Other than to the executive office and the 94
5 U.S. attorneys offices?

6 A. Yes, sir.

7 Q. Until this data rights issue is resolved?

8 A. Correct.

9 Q. All right. Then you go beyond that to describe
10 how, in terms of your offer, you propose to try to resolve
11 the data rights issue; isn't that right?

12 A. Let me look at the letter.

13 (Pause.)

14 A. I also state that this does not change the
15 rights under the contract of either party.

16 Q. You have made that clear.

17 (Pause.)

18 A. I have looked at the next to last paragraph of
19 the letter.

20 BY MR. KELLOGG:

21 Q. There again, tell me the gist of your
22 understanding of what you were proposing as to a manner to

1 resolve the data rights issue after you get the article 30
2 data requirements delivered to you and you have agreed not
3 to disseminate it until this data rights issue is resolved,
4 what is the gist of this proposal as far as how to resolve
5 the data rights issue?

6 A. Basically, INSLAW would deliver, meet the
7 requirement under article 30 and deliver the data. And
8 assuming it was in a format acceptable to the government,
9 and assuming that the government agreed that, indeed, there
10 were proprietary enhancements incorporated in that data,
11 then -- which were not necessary for the contract
12 performance, then the government would discuss the matter
13 further with INSLAW.

14 Q. All right. What did you mean or what was in
15 your mind when you say then they would discuss the matter
16 further if --

17 A. That we would discuss the matter further with
18 INSLAW.

19 Q. Did you mean by that that you would negotiate
20 over some form of payment if you wanted to keep any of those
21 things that were in there but not required for performance
22 of the contract?

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1 A. Or payment by INSLAW to us.

2 Q. Pardon?

3 A. Or payment by INSLAW to us for the costs of --
4 any costs associated with removal of that data.

5 Q. I am limiting my question here to --

6 A. The discussions, basically, the letter says we
7 will talk. If indeed any proprietary enhancements were
8 identified and agreed to, indeed, there were proprietary, by
9 the government, in that data submitted by INSLAW, then we
10 would talk further.

11 Q. Doesn't your offer also say there that the
12 government would then either destroy or return the enhanced
13 versions --

14 A. I guess on the next page it does say that. It
15 does say that on the next page.

16 Q. What is it the government would have destroyed
17 or returned?

18 A. What this letter, I think, says is that if
19 enhancements which INSLAW claims are proprietary and the
20 government agrees are proprietary are identified, then the
21 government would discuss with INSLAW whether these
22 enhancements are necessary for contract performance or not,

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1 they would discuss the matter of disposal of the matter,
2 disposal of these enhancements. What we are really talking
3 about is disposal.

4 Q. So that I understand you clearly, when you got
5 the language in here, the language which says, " Following
6 resolution of the data rights issue, the government will
7 review the effect of any enhancements which are determined
8 to be proprietary and then either direct INSLAW to delete
9 those enhancements from the versions of PROMIS to be
10 delivered under the contract, or negotiate with INSLAW
11 regarding the inclusion of those enhancements in that
12 software."

13 Now, my question relates to that phrase
14 beginning "Negotiate with INSLAW regarding the inclusion of
15 those enhancements in that software."

16 What did you mean in your mind by that phrase
17 "Negotiate with INSLAW regarding the inclusion of those
18 enhancements in that software"?

19 A. Discuss the matter with INSLAW with respect of
20 their, INSLAW's, having included enhancements which INSLAW
21 claims are proprietary into the software delivered to us.

22 Q. Now, so that I understand, are you saying that

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1 in your mind when this offer was made and use of that term
2 "Negotiate with INSLAW", that you did not envision any
3 possibility that there would be any set of circumstances
4 under which the government would pay any money to INSLAW
5 following negotiations to include any of these privately
6 funded enhancements, if there were any?

7 A. Like I said, it could have been a situation
8 where INSLAW would have to pay us. This is an offer to
9 discuss the matter further.

10 Q. I recognize that it is.

11 A. I don't know what I envisioned back then. I
12 don't think I did envision payment to INSLAW.

13 Q. But apparently you did envision that INSLAW
14 might have to pay the government something, is that right?

15 A. I mention that as a hypothetical possibility,
16 the same way as you brought out a hypothetical.

17 Q. Well, so are you saying that either one would
18 be an equally possible hypothetical in your mind?

19 A. I don't know if it's equal or not. We are
20 really philosophizing back and forth here. I wish counsel
21 would rule on that. I am not an expert on data rights.

22 Q. All right. Are you aware that Mr. Tyson

1 testified in his deposition here recently that his
2 understanding on this issue was that the government was
3 prepared, if there were privately funded enhancements
4 demonstrated to their satisfaction, not necessary for the
5 contract, that the government was prepared to pay INSLAW for
6 them?

7 MS. SPOONER: Is your question, Mr. Kellogg,
8 whether this witness is aware of Mr. Tyson's testimony?
9

10 MR. KELLOGG: Yes.

11 A. I am not aware of Mr. Tyson's testimony. But
12 the government cannot buy something or pay for something it
13 does not need.

14 BY MR. KELLOGG:

15 Q. So does --

16 A. So he is wrong if he said that.

17 Q. If he did testify that way --

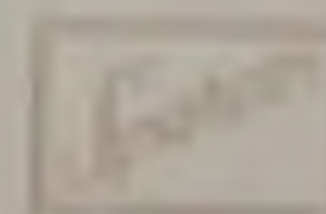
18 A. If there is no need, it's against the law to
19 buy it.

20 Q. So you would be surprised --

21 A. That he would have said that.

22 Q. If he would have said that?

A. Or -- I don't think any government official



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1 testified in his deposition here recently that his
2 understanding on this issue was that the government was
3 prepared, if there were privately funded enhancements
4 demonstrated to their satisfaction, not necessary for the
5 contract, that the government was prepared to pay INSLAW for
6 them?

7 MS. SPOONER: Is your question, Mr. Kellogg,
8 whether this witness is aware of Mr. Tyson's testimony?

9 MR. KELLOGG: Yes.

10 A. I am not aware of Mr. Tyson's testimony. But
11 the government cannot buy something or pay for something it
12 does not need.

13 BY MR. KELLOGG:

14 Q. So does --

15 A. So he is wrong if he said that.

16 Q. If he did testify that way --

17 A. If there is no need, it's against the law to
18 buy it.

19 Q. So you would be surprised --

20 A. That he would have said that.

21 Q. If he would have said that?

22 A. Or -- I don't think any government official

1 would buy things that they don't need. I think implicit in
2 your statement was that the software was unnecessary.

3 I am going to get a cup of coffee.

4 MR. KELLOGG: Sure.

5 (Recess.)

6 MR. KELLOGG: Mark this as Exhibit 22, please.

7 (Deposition Exhibit 22 was marked for
8 identification.)

9 BY MR. KELLOGG:

10 Q. I show you Exhibit 22, Mr. Videnieks. Look it
11 over and tell me whether that is a copy of what we have
12 referred to here as modification 12 to the INSLAW 1982
13 contract with the Department of Justice.

14 A. Yes, sir, it is.

15 Q. This is what you have referred to in your
16 testimony as mod 12?

17 A. Yes, sir.

18 Q. Turning to page 2, subparagraph B, where it
19 recites that the government shall limit and restrict the
20 dissemination of the software and provides that under no
21 circumstances shall there be dissemination beyond the places
22 limited, pending resolution of the issues extant between the

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1 contractor and the government under the terms and conditions
2 of the contract.

3 Now, when the modification there speaks of
4 pending resolution of the issues extant, was this data
5 rights issue one of the issues that was extant and that you
6 were referring to there?

7 A. INSLAW's claim as to data rights.

8 Q. Yes.

9 A. Okay. Yes, sure, it was.

10 Q. When you talked here about resolution of the
11 issues, the way that issue of INSLAW's claim to data rights,
12 the way that was intended to be resolved was the way set out
13 in your offer in Exhibit 20, I believe it is; isn't that
14 right, in substance?

15 A. I think another letter dealt with the subject,
16 the transmittal letter which covered modification number 12,
17 which I would like to look at.

18 Q. Mr. Videnieks, I don't think I have got that.

19 A. Well, it was very important.

20 Q. I am sure it's somewhere, I don't have it in
21 front of me.

22 Can you tell me just what your recollection --



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1 A. I would like to read it before I try to
2 remember what the letter said. It's an important letter,
3 it's directly related to modification number 12. I think it
4 should be considered together.

5 Q. When you say it's a cover letter, is it a cover
6 letter from you to Mr. Sherzer or from Mr. Sherzer to you?

7 A. It may have been addressed from me to INSLAW.

8 Q. It may have been, you say, a letter from you to
9 INSLAW?

10 A. Right, it was two pages. In fact, Mr. Sherzer
11 answered taking exception to some of the points contained in
12 that letter.

13 Q. I take it this would have preceded the
14 execution of the mod 12, on April 11?

15 A. It transmitted the finally executed
16 modification to the contract.

17 MR. LYONS: Could we go off the record a
18 minute?

19 (Off-the-record discussion.)

20 MR. KELLOGG: Back on the record.

21 BY MR. KELLOGG:

22 Q. Again, speaking about the reference in the mod

1 12 to resolution of the issues extant, would the parties'
2 intention as to how to resolve those issues be as set forth
3 in your letter of March 18, 1983, Exhibit 20, as modified,
4 if at all, by your subsequent transmittal letter or any
5 other subsequent correspondence?

6 A. I don't think my letter of March 8 --

7 Q. Not 8, it's 18.

8 A. 18. My question is, I have to look at it again
9 to see if it addresses methodology.

10 Q. I don't want to get confused with your
11 methodology. It does not address a method for INSLAW to
12 prove to your satisfaction or to the government's
13 satisfaction that any particular enhancements are
14 proprietary, you are correct about that.

15 But it does discuss simply the procedure that
16 there is going to be a process whereby INSLAW will have the
17 obligation to try to prove that it has privately funded
18 enhancements.

19 In other words, it would have to identify them
20 and show you that these things were privately funded and
21 that they are not required under this contract.

22 A. To our satisfaction, yes.

1 Q. Yes, okay. It was that process that was
2 envisioned when you spoke in mod 12 of resolving the issues
3 extant between the parties; isn't that right?

4 A. It is in plural, though, and this is one of
5 those issues referred to.

6 Q. All right, data rights was one issue. The
7 other issue, I take it, was what at the time, the advance
8 payments?

9 A. I think modification number 12, on page 3,
10 states: C, government shall continue making advance
11 payments to the contractor. So that apparently was another
12 issue.

13 Q. Would it appear by saying in the contract in
14 mod 12 that the government shall continue making the advance
15 payments, would that imply that the advance payments issue
16 was resolved?

17 A. It would imply that the issue was resolved so
18 long as the contractor adhered to the terms of article, the
19 article dealing with advance payments.

20 Q. Yes. Then wouldn't it seem to indicate,
21 then --

22 A. Which is D.

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1 Q. Wouldn't it seem to indicate, then, that the
2 advance payments question would not be one of the pending
3 issues to be resolved, referred to in B?

4 A. It may be, it may be, sir.

5 Q. Do you recall any other issue that decides the
6 data rights that was to be resolved as referred to there?

7 A. It's a very general term. It's a broad term,
8 issues extant. We had --

9 Q. Yes, I don't --

10 A. Data requirements was an issue, INSLAW's claim
11 to data rights was an issue. I believe advance payments was
12 still an issue, I am not sure.

13 It was an issue up to the point of execution of
14 the modification.

15 Q. But here you are talking about resolution of
16 issues which are tied to the dissemination of the software;
17 isn't that right?

18 A. What issues would that be in your opinion? You
19 are limiting. I am saying it's broad, you are saying it's
20 limited, you are saying it's narrow.

21 Q. I am not. I am trying to ask you for your
22 recollection.

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1 A. My recollection is, for example, are the three
2 issues which I just enumerated, data rights, data
3 requirements, advance payments, contractors abiding by the
4 advance payments provision, the -- there were some
5 inter-related issues discussed which led up to modification
6 number 12.

7 Q. And by this subparagraph B here, the government
8 was agreeing to restrict the dissemination of the software
9 as specified there pending resolution of all of those issues
10 that you are talking about?

11 A. That's the -- to the best of my recollection,
12 what I read there.

13 Q. Following the execution of this mod 12, did
14 INSLAW ever propose a method for demonstrating the
15 proprietary enhancements?

16 A. I think I remember that in INSLAW's
17 correspondence they do offer methodology and ask for our
18 concurrence.

19 Q. In your recollection, how long was that after
20 the mod 12 was executed?

21 A. I don't recall.

22 Q. Would it be, do you think it was within a

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1 month?

2 A. I don't recall.

3 MR. KELLOGG: I would ask that you mark this
4 set of exhibits, the first one as exhibit 23, and the others
5 as 23 A, B and C.

6 (Deposition Exhibit 23, 23 A, 23 B, 23 C
7 and 23 D were marked for identification.)

8 MS. SPOONER: Is that an identifiable set that
9 I have, Mr. Kellogg?

10 MR. KELLOGG: Yes, it's in the middle set that
11 I gave you. I think it should be the first four documents.
12 It states with memo of Joyce Deroy to Hamilton, together
13 with three attachments.

14 MS. SPOONER: Thank you. Now I have four
15 attachments, did you mean to leave out one of them?

16 MR. KELLOGG: Is the fourth one?

17 MS. SPOONER: I have an A, B, C and D. D is --

18 (Pause.)

19 MR. KELLOGG: I misspoke.

20 BY MR. KELLOGG:

21 Q. Take a look at that set of documents marked
22 exhibit 23 and 23 A through D, I believe it is.

(Witness examines document.)

A. I looked at them.

BY MR. KELLOGG:

Q. Mr. Videnieks, exhibit 23 and 23 A through D consists of a memorandum from Joyce Derooy to Mr. Hamilton, together with some attachments which appear to be prepared in response to this matter and for submission to you.

Do you recall ever seeing those before?

A. I think I have these documents in my file. As to when I received them, I don't recollect.

Q. I think it's fair to say that you probably received them sometime after they are dated there in early April of --

A. I don't know whether INSLAW would have submitted internal documents to us attached to their correspondence, they may have.

I know I have -- I have seen these documents. I have seen them recently, and I can't recall when I saw them a few years ago.

Q. Does this look like the submission that you received from INSLAW regarding a proposed method for identifying the enhancements?

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1 A. I don't think I see a methodology described in
2 here. The Joyce Deroy memorandum identifies Bill Hamilton,
3 claimed proprietary enhancements -- demonstration of funding
4 sources.

5 Their conclusions, but not the methodology, to
6 the best of my cursory review here, what I can conclude is
7 that these are conclusory-type documents.

8 Q. At some point, though, your recollection is
9 that INSLAW did submit to you a proposed methodology for
10 performing this task, that is, for identifying the privately
11 funded enhancements for your consideration?

12 A. At some time they did, yes.

13 MR. KELLOGG: Mark this as exhibit 24.

14 (Deposition Exhibit 24 was marked for
15 identification.)

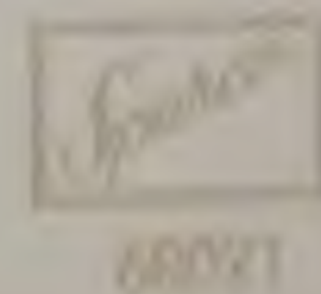
16 (Witness examines document.)

17 A. I have looked at this exhibit 24.

18 BY MR. KELLOGG:

19 Q. Exhibit 24, is that a copy of a letter that Mr.
20 Sherzer sent you, together with a series of further
21 materials on this enhancement issue?

22 A. Yes, sir.



1 MR. KELLOGG: Mark this as Exhibit 25.

2 (Deposition Exhibit 25 was marked for
3 identification.)

4 (Witness examines document.)

5 MS. SPOONER: Exhibit 25 contains two
6 attachments?

7 MR. KELLOGG: Yes.

8 A. Okay, I have looked at 25.

9 BY MR. KELLOGG:

10 Q. Is 25 a copy of a May 4, 1983, letter to you
11 from Harvey Sherzer, together with two attachments that were
12 enclosed?

13 A. Yes, sir.

14 Q. Again, this letter was additional follow-up
15 regarding this enhancements issue, wasn't it?

16 A. Yes, sir.

17 Q. If you will turn to the second attachment which
18 appears to be --

19 A. Could I comment on the letter, first, second
20 paragraph?

21 Q. Sure.

22 A. Mr. Sherzer seems to be saying here that, I

1 will read the government enjoys "unlimited rights under the
2 contract."

3 Q. Yes, his letter speaks in terms of the
4 copyrightability of software provided which was developed at
5 government expense, if you will look at that earlier
6 sentence there. Maybe I misunderstood your point.

7 To clarify, the letter addresses two matters,
8 one being the enhancements question and the second being
9 this copyright question which is addressed in the second
10 paragraph of the letter; is that correct?

11 A. I just brought up the point that Mr. Sherzer
12 states that we have unlimited rights under the contract.

13 Q. Yes, he is referring there to software
14 developed at government expense.

15 A. Items delivered under the contract. It's A
16 side issue anyway. I thought it was interesting.

17 Q. In any event, if you turn to the second
18 attachment, a memorandum dated April 26, 1983, to Mr.
19 Sherzer by Joyce Deroy.

20 Before we get to the memorandum, in the first
21 paragraph of his cover letter Mr. Sherzer says, the last
22 phrase of the second sentence, "The company proposes the

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1 accumulation of additional supporting information and
2 documentation using the methodology described in the
3 memorandum attached hereto."

4 A. Which, I am lost. Where are we?

5 Q. I am sorry.

6 MS. SPOONER: You referred to the attachment.
7 I think you are reading from the letter.

8 BY MR. KELLOGG:

9 Q. I jumped back to the cover letter.

10 A. Okay.

11 Q. The second sentence of the cover letter, Mr.
12 Sherzer says, "The company proposes the accumulation of
13 additional supporting information and documentation using
14 the methodology described in the memorandum attached
15 hereto."

16 I assume that the memorandum describing the
17 methodology that he is talking about there is this second
18 attachment, the April 26 memo of Joyce Deroy; is that
19 correct?

20 A. Are you asking me to comment on the assumption?

21 Q. Well, he wrote you the letter. Is that what
22 you understood him to mean?

1 A. It's one of these two memoranda. Let's see if
2 the first one contains any methodology or not.

3 Q. The first one seems to deal with the copyright
4 question, and that is why I --

5 A. Then he must be referring to the second
6 memorandum.

7 Q. In any event he goes on to say, now I am again
8 referring not to the memo, but to the cover letter, he goes
9 on to say in the last sentence of the first paragraph,
10 "Since the effort necessarily will be time consuming, I
11 would request that you contact me, indicating whether the
12 approach proposed suffices for the department's purposes and
13 whether any revisions there to are suggested."

14 So clearly, he is submitting this to you for
15 review and asking you or the other government
16 representatives to tell him, this is what we propose to do,
17 is this going to be satisfactory for your needs, isn't that
18 the gist of that?

19 A. That's true.

20 Q. All right. Do you recall making any response
21 to that question, in effect, that he asked of you, whether
22 this was adequate for the government's needs?

1 A. It's one of these two memoranda. Let's see if
2 the first one contains any methodology or not.

3 Q. The first one seems to deal with the copyright
4 question, and that is why I --

5 A. Then he must be referring to the second
6 memorandum.

7 Q. In any event he goes on to say, now I am again
8 referring not to the memo, but to the cover letter, he goes
9 on to say in the last sentence of the first paragraph,
10 "Since the effort necessarily will be time consuming, I
11 would request that you contact me, indicating whether the
12 approach proposed suffices for the department's purposes and
13 whether any revisions there to are suggested."

14 So clearly, he is submitting this to you for
15 review and asking you or the other government
16 representatives to tell him, this is what we propose to do,
17 is this going to be satisfactory for your needs, isn't that
18 the gist of that?

19 A. That's true.

20 Q. All right. Do you recall making any response
21 to that question, in effect, that he asked of you, whether
22 this was adequate for the government's needs?

1 A. I don't specifically recall a response. I do
2 recall that the government chose to let INSLAW determine,
3 itself, which methodology best suited their ability to
4 comply with our requirement under article 30.

5 Q. I take it the government, you do recall that
6 the government declined to tell INSLAW what there was about
7 this particular methodology that was unsatisfactory?

8 A. I don't recall what the government said. But I
9 do remember we had specific technical problems with respect
10 to the methodology.

11 Also, we were -- in the situation, we were
12 after the end result. We are after fulfillment of the
13 request; the methodology is up to the contractor. One could
14 approve a certain methodology and then the end result may
15 not satisfy the requirement.

16 Q. So you were not, in any event, you do recall
17 that the government did not approve this proposed
18 methodology; isn't that right?

19 A. Did he ask for our approval? We were not in an
20 approval situation. The request is, please contact me
21 whether the proposed approach suffices.

22 Q. Well?

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1 A. We discussed it among ourselves and decided
2 that since INSLAW is making the claim that any supporting
3 data must be readily available, and we would rather not get
4 involved in their in-house effort how to produce the
5 required documentation software.

6 Q. All right. So you decided not to tell INSLAW
7 whether or not this particular proposed methodology would
8 suffice --

9 A. I don't recall that specifically. We may have
10 commented to them with respect to this specific proposed
11 methodology. However, we, overall, decided that the method
12 of satisfying our request is INSLAW's decision.

13 Q. Implicit in that is you decided that INSLAW
14 could do whatever it wanted in terms of the methodology and
15 you wouldn't tell them in advance whether the methodology
16 was acceptable or unacceptable, you decided you were going
17 to wait to see whatever the end result was that they
18 submitted and you would review that material and see whether
19 the material satisfied the contract, and you wouldn't get
20 involved with telling them anything about the methodology?

21 A. Yes.

22 Q. Is that fair to say?

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1 A. Yes, that's fair to say because we felt that
2 since they made a claim, the supporting data was readily
3 available.

4 Q. All right, do you have any --

5 A. Or should be readily available.

6 Q. Let me ask you this. Going back to Mr.
7 Sherzer's May 4 letter to you there, he indicates there that
8 to gather the information together according to the
9 methodology that they were proposing would be quite time
10 consuming.

11 Did the government feel that that claim that it
12 would be time consuming was inaccurate?

13 A. I can't recall any specific feelings on my part
14 or on the feelings of others how we felt with respect to
15 Sherzer's statement there.

16 MR. KELLOGG: Mark this as 26, please.

17 (Deposition Exhibit 26 was marked for
18 identification.)

19 (Witness examines document.)

20 MS. SPOONER: Would you be coming to a
21 convenient stopping point soon?

22 (Off-the-record discussion.)

1 A. Question. This refreshes my memory. However,
2 if we had this letter as the next exhibit, we would have
3 saved some time. I could have read it beforehand, if we
4 asked prior questions.

5 BY MR. KELLOGG:

6 Q. The way this works, Mr. Videnieks, is, I will
7 have to do the questions, you will have to do the answers.

8 A. Right.

9 Q. I will try to do the best I can. I know that
10 you are trying to do the best that you can.

11 A. That's right.

12 Q. Referring to exhibit 26, that would appear to
13 be a response by you dated June 10, 1983, to Mr. Sherzer to
14 his letter to you of May 4 that we have marked here as
15 Exhibit 25; is that correct?

16 A. Yes.

17 Q. I gather that reading the letter, this
18 refreshes your recollection, and in this letter you did say
19 in the last paragraph that, "your letter," referring, now,
20 to Mr. Sherzer's May 4 letter to you, "requests that the
21 government either approve the INSLAW proposal for
22 identifying and demonstrating that certain enhancements are

1 proprietary, or suggest revision to that approach. The
2 government is in a position to do neither. The burden of
3 identifying those enhancements and proving that they were in
4 fact developed at private expense outside the scope of any
5 government contract remains with INSLAW."

6 So does this refresh your recollection that you
7 actually advised Mr. Sherzer of the position that you
8 indicated you recalled was the substance of the position the
9 government people were taking?

10 A. Yes.

11 Q. Who wrote this letter, sir?

12 A. It -- I can't recall who the -- it may have
13 been a joint effort by counsel, EOUSA and me. I don't
14 specifically recall who put the major effort into it.

15 Q. At this point counsel would still be Mr.
16 William Snider?

17 A. I think so, on June 10, '83, I think he was
18 still there.

19 Q. EOUSA would probably include Mr. Brewer and Mr.
20 Rugh at that point?

21 A. Yes, sir and Mike Snyder.

22 Q. And Mike Snyder as well?

6/10/83

6/10/83

1 A. Right.

2 Q. Do you have any recollection of any particular
3 input that Mr. Rugh made in the drafting of this letter?

4 A. I am sure he must have participated. The parts
5 of the letter which deal with technical matters, I am sure
6 that Mr. Rugh may have had an input or a role in drafting.

7 Q. How about the last paragraph in which you
8 decline to either approve or disapprove the suggested
9 procedure that INSLAW had advanced, did Mr. Rugh have any --

10 A. That could have been me paraphrasing a
11 memorandum from either Rugh or counsel or anybody, or it
12 could be my lifting out language from memoranda submitted to
13 me. I don't specifically recall.

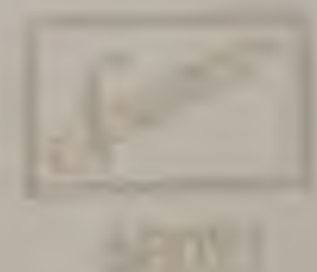
14 Q. Do you recall getting memoranda from either the
15 executive office or Mr. William Snider, or both?

16 A. Memoranda and/or telephone conversations,
17 advice.

18 Q. Do you recall any particular input in the
19 drafting of this letter that Mr. Brewer may have made?

20 A. I don't recall particular input. That does not
21 mean it was not made.

22 Q. I gather you don't recall Mr. Brewer having any



1 input in that last paragraph?

2 A. Not specifically. When one, in a situation
3 like this, establishes a deadline, it is usually discussed
4 among procurement, legal and project.

5 Q. Mr. Videnieks, I think it's fair to say that
6 this issue was never resolved, that is to say, INSLAW never
7 did submit an identification of all of its claimed
8 enhancements in a manner that the government was satisfied
9 with; isn't that correct?

10 A. I think the operative word is not
11 identification, I think it's -- there is a second word which
12 we should use, which is substantiation.

13 Q. All right, identification and substantiation?

14 A. And substantiation.

15 Q. Whatever it is, so far as the government was
16 concerned, INSLAW never did submit it in a form satisfactory
17 to the government; isn't that right?

18 A. To the best of my recollection, INSLAW did not
19 show to our satisfaction that, indeed, there were claimed
20 proprietary enhancements.

21 Q. As a matter of fact, sometime in August of
22 1983, after further exchange of letters, there was an

1 informal agreement reached that simply INSLAW was not going
2 to seek to try to prove this any further at that point, is
3 that right?

4 A. I don't recall any such agreement. That does
5 not mean it was not made. To the best of my recollection,
6 the issue was still open.

7 Q. I don't mean to imply the issue wasn't open.
8 But what I am reading from here, and the reason I ask this
9 question is an August 1, 1983, handwritten memo of Mr.
10 Gizzarelli, which says as follows: "In a meeting this
11 date," August 1, 1983, "Peter Videnieks, Brick Brewer and I
12 agreed that Joyce Deroy and her group would do no additional
13 work to justify INSLAW's claim to proprietary rights to
14 PROMIS because Peter and Brick will not accept our
15 methodology to substantiate our claim."

16 MS. SPOONER: Is there some reason, Mr.
17 Kellogg, why you prefer the witness not see that?

18 MR. KELLOGG: No, you are welcome to see it. I
19 mean, it's not his memo.

20 MS. SPOONER: I understand.

21 MR. KELLOGG: Isn't that in your papers?

22 MS. SPOONER: Legal sized?

1 MR. KELLOGG: Yes.

2 MS. SPOONER: I don't believe so.

3 MR. KELLOGG: Let's mark this one. You can
4 take a look.

5 (Deposition Exhibit 27 was marked for
6 identification.)

7 (Witness examines document.)

8 A. Speaking for me, it's an inaccurate memorandum.

9 BY MR. KELLOGG:

10 Q. Do you recall attending a meeting with
11 yourself, Mr. Brewer and Mr. Gizzarelli in that timeframe?

12 A. I don't recall it, any such meeting. However,
13 that does not mean it did not take place.

14 Implicit in this note is that we approved Joyce
15 Deroy's effort up to a point.

16 Q. No, well --

17 A. The way it's stated.

18 Q. I don't read it as making that implication and
19 I am not trying to assert that implication.

20 A. Neither did we -- I am speaking for myself, not
21 for Brick.

22 Q. Yes, okay.

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1 A. The memorandum says in a meeting, I, Brewer and
2 Gizzarelli agreed that Joyce Deroy and her group would do no
3 additional work. I don't recall such -- I would have to
4 deny making any agreement.

5 The position taken by us was that it's INSLAW's
6 own concern as to how they meet our requirement under the
7 data requirements clause.

8 This is a loaded memorandum, seems to imply
9 that the government was working jointly or something with
10 INSLAW to -- for INSLAW to comply with our request. That
11 was not the case.

12 Q. You were not working jointly with INSLAW --

13 A. No.

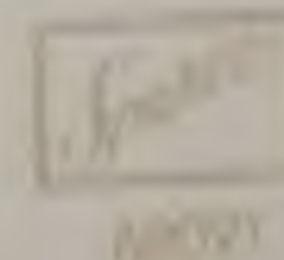
14 Q. -- to assist INSLAW in answering your request?

15 A. Excuse me?

16 Q. I say the government was not working jointly --

17 A. That memorandum, to me, my reading it, implies
18 some approval or agreement by the government in Joyce's
19 efforts. That's contrary to our positions taken.

20 Q. As I say, your position is the government never
21 agreed to any efforts that Ms. Deroy may have made, whatever
22 efforts she made that was --



1 A. I don't know what efforts --

2 Q. I understand. Whatever efforts she made was
3 INSLAW's business and the government had nothing to do with
4 it, is that right, as far as agreeing or disagreeing?

5 A. Yes. It was my position that INSLAW meet the
6 requirement the best they knew how.

7 Q. And how they did it was up to INSLAW?

8 A. Since it was their claim. And when one
9 normally makes a claim, the substantiation should be easily
10 available.

11 Q. In any event, there is no dispute that INSLAW
12 never did substantiate its claims to the government's
13 satisfaction on this proprietary enhancements question?

14 A. That is correct.

15 MR. KELLOGG: I think this is a good time to
16 stop for lunch, and if we could, let's come back at 1:30

17 (Whereupon, the deposition was recessed at
18 12:30 p.m., to resume at 1:30 p.m.)
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AFTERNOON SESSION

(1:30 p.m.)

BY MR. KELLOGG:

Q. Mr. Videnieks, we are back from lunch break and ready to resume the deposition.

Now, initially this afternoon, Mr. Videnieks, I want to ask you a series of questions governing, relating to what I will call generally the data center time sharing cost dispute.

MR. KELLOGG: I want to mark this as the next exhibit, Exhibit 28.

(Deposition Exhibit 28 was marked for identification.)

MS. SPOONER: This is the new one that you gave me, is that right?

MR. KELLOGG: Yes.

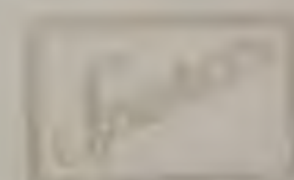
(Witness examines document.)

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, have you reviewed quickly what has been marked as Exhibit 28?



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1 A. Yes, sir.

2 Q. That appears to be a copy of a negotiation
3 agreement between the government and INSLAW, dated December
4 15, 1982; is that correct?

5 A. Yes.

6 Q. Have you ever seen that before, to your
7 recollection?

8 A. Sir?

9 A. Yes, sir.

10 Q. Can you describe to me just generally what a
11 negotiation agreement is in relation to one of these
12 computer contracts?

13 A. This negotiation agreement pertains to all
14 government contracts.

15 Q. Between the government and INSLAW?

16 A. Right.

17 Q. So this is something that would have been
18 reached outside of the contract that you were the
19 contracting officer on with INSLAW ; is that right?

20 A. Yes, sir.

21 Q. But by definition it had application in certain
22 respects to the administration of your contract, is that

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1 right?

2 A. In certain respects in accordance with
3 applicable regulations.

4 Q. Turn your attention to paragraph C on the first
5 page under computer center.

6 A. Yes.

7 Q. Do you see down there where it says, the third
8 line, "Fixed with carry forward provision effective from
9 10-1-82," and then under the column "Period 2" it says
10 9-30-83. Then it has a rate, .067/SRU. Do you see that,
11 sir?

12 A. Yes, sir.

13 Q. Is it accurate to describe that number there,
14 the rate .067/SRU, as being a fixed rate with a carry
15 forward provision to be applied to INSLAW's computer center
16 operations for purposes of certain parts of the INSLAW
17 contract?

18 A. No.

19 Q. You tell me what it is.

20 A. I think the .067/SRU is not a rate, but a
21 dollar or cent amount. It's not identified --

22 Q. Why would it be in the column headed rate if

1 it's not a rate?

2 A. Well, maybe you feel it's a rate. You asked my
3 opinion what it is, I feel it was dollars and cents.

4 Q. But you agree it's in a column that is labeled
5 rate, don't you?

6 A. Yes, sir.

7 Q. It doesn't have any dollar sign on it, does it?

8 A. No, sir.

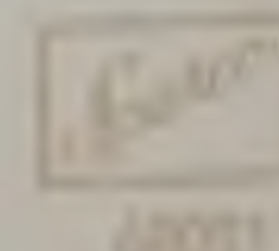
9 Q. Whether it's a dollar amount or a percentage or
10 some other type rate, I take it that you would not dispute
11 it is characterized here as being fixed with a carry forward
12 provision; is that correct?

13 A. The words "fixed with carry forward provision"
14 are in line with the .067/SRU.

15 Q. Well, if you notice up in the first line under
16 that same heading, type, it says, describing the period of
17 January 1 of '81 to 9-30-81, it has the word provisional.

18 A. Yes.

19 Q. And then in contrast to that in the next two
20 lines, including the third line that I have already called
21 your attention to for fiscal year '83, both of them in
22 contrast say "fixed with carry forward provision," is that



1 correct?

2 A. Yes.

3 Q. Do you know, sir, what the difference is
4 between a provisional type and a fixed with carry forward
5 provision?

6 A. Fixed rates can be provisional.

7 Q. Pardon me?

8 A. Fixed rates can be provisional.

9 Q. Well, that's not my question. My question is,
10 do you know what --

11 A. There may be no difference, sir. My answer is,
12 fixed rates can be provisional.

13 Q. On this piece of paper they appear to be
14 described in different ways. One appears to be described
15 with the single word provisional, and the other two are
16 described, fixed with carry forward provision.

17 Now, my question is, do you know as you look at
18 that whether those two different terms mean anything
19 different from each other?

20 A. No, sir.

21 Q. They may or may not, you just don't know?

22 A. I said no, sir.



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1 Q. Well, may they mean something different and you
2 just don't know whether they mean two different things?

3 A. I think these are all provisional rates, sir.

4 Q. Would it be your testimony that you think these
5 two terms mean effectively the same thing?

6 A. My testimony is that this document contains
7 provisional rates.

8 Q. Mr. Videnieks, you know, we have been here for
9 almost two days now, and I am not trying to prolong this.
10 But my question is not, I am not trying to get into a legal
11 debate with you.

12 I am just trying to probe your understanding,
13 if you have any, of these terms in the context of the
14 government contract administration that you were charged
15 with.

16 And my question to you is simply, as these two
17 different terms are used on this document, do the two terms
18 mean anything different from one another in your
19 understanding of them, or do they both mean the same thing,
20 or do you not know?

21 A. All of the rates contained on this document are
22 provisional rates. They all are fixed provisionally. In

1 other words, these are rates, provisional reimbursement
2 rates. They are fixed for a period of time.

3 Q. I guess let me ask you this question. In your
4 opinion would this mean anything different if, instead of
5 having the phrase "fixed with carry forward provision" on
6 the two lines relating to fiscal year '82 and fiscal year
7 '83, if instead of that they had the word provisional, would
8 there be any difference in its meaning to you?

9 A. No. These are all --

10 Q. All right, you have answered the question.

11 A. These are provisional rates.

12 Q. All right.

13 A. Rates, slash, amounts.

14 MR. KELLOGG: Mark that as Exhibit 29, please.

15 (Deposition Exhibit 29 was marked for
16 identification.)

17 BY MR. KELLOGG:

18 Q. Take a look at Exhibit 29, please. I will just
19 tell you, that is a part of an appendix to the request for
20 proposal by the government in this contract that you were
21 contracting officer on.

22 (Witness examines document.)

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1 BY MR. KELLOGG:

2 Q. Do you recall ever seeing that before, sir?

3 A. Yes, sir.

4 Q. Does that appear to be a copy of an appendix to
5 the RFP that was issued in connection with this particular
6 contract or what became this INSLAW contract?

7 A. No, sir.

8 Q. What does it appear to you to be?

9 A. It appears to be an appendix to the statement
10 of work I was included in the RFP.

11 Q. It was included in the RFP that was issued in
12 connection with this contract, yes?

13 A. Not in connection with the contract, but that
14 resulted in the contract, yes.

15 Q. All right, that resulted in the contract.

16 A. Yes.

17 Q. Looking at page 2, if you can look at page 2 of
18 that document. The first full paragraph but the second
19 paragraph on the page, you see there in the middle, towards
20 the end of the paragraph where it says, "No costs were
21 maintained on the development of the system, so this could
22 not be evaluated, but JMD estimated that it was costing

Sparco

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1 about 500,000 a year to run the system in the Chicago
2 office, alone"?

3 A. Yes, sir.

4 Q. Do you recall that fact ever coming to your
5 attention in connection with the time sharing dispute that
6 developed in 1983 and 1984 here with INSLAW?

7 A. I don't know.

8 MR. KELLOGG: Mark this, please, it's Exhibit
9 30.

10 (Deposition Exhibit 30 was marked for
11 identification.)

12 (Witness examines document.)

13 MR. KELLOGG: Off the record.

14 (Off-the-record discussion.)

15 MR. KELLOGG: Let's go back on the record.

16 BY MR. KELLOGG:

17 Q. Mr. Videnieks, looking at Exhibit 30, this
18 appears to be a copy of a letter sent to you by date of
19 April 8, 1983, from Murray Hannon, the INSLAW controller; is
20 that correct?

21 A. Yes, sir.

22 Q. In that letter he makes reference to a letter

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1 from Mr. James Dimm, to you of March 8, 1983.

2 He also indicates, referring to the letter,
3 that the Dimm letter indicates that, "Your offices are
4 submitting transactions at a rate far greater than we had
5 anticipated when we submitted our initial cost proposal. It
6 is our understanding that you do not wish to restrict their
7 usage of the system, and, therefore, we have prepared this
8 request for modification."

9 And he also refers to a rationale for the time
10 sharing billing procedure.

11 Do you recall receiving this letter and the
12 attachments to it?

13 A. I wish I could see the attachments, sir. That
14 would refresh my memory. The letter obviously is addressed
15 to me, signed by Hannon.

16 Q. Let me ask you this. I take it that you do
17 recall at some point receiving a letter from somebody at
18 INSLAW advising you or claiming that because the various
19 U.S. attorneys offices were using the time sharing computer
20 facility at a rate above that which had been estimated, that
21 INSLAW was asking to increase the allowable costs for time
22 sharing under the contract, you remember them --

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1 A. That's not what this letter says, sir.

2 Q. I am not saying it does.

3 A. I am looking at this letter, it's addressed to
4 me, it's signed. I acknowledge its existence.

5 Q. Well, the first sentence says, "The purpose of
6 this letter is to request a contract modification to cover
7 costs and fee associated with the higher and anticipated use
8 of our time sharing service," isn't that right?

9 A. Yes, sir, but you mentioned allowable costs.

10 Q. Now, if I did, I did that inadvertently and I
11 know that is a term of art in government contractese, and I
12 didn't intend to. I didn't intend to.

13 To the best of your recollection, was it in
14 this letter and any associated attachments that INSLAW first
15 made a claim to you that they wanted to modify the time
16 sharing costs because they claimed that the use was above
17 what it was anticipated to be or estimated to be?

18 A. Sir, I have to answer no, because your question
19 is not technically correct.

20 Q. Well --

21 A. So the answer is no.

22 Q. All right. Do you recall INSLAW ever sending

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